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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Supreme Court of Michigan, entered on April 6, 1966, dismissing the Petition for Review of Apportionment Plan, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that substantial Federal questions are presented.

(a) OPINIONS BELOW

The opinions of the Supreme Court of Michigan in this proceeding are reported at 376 Mich. 410, 137 N.W. 2d 495, 138 N.W. 2d 16, and 377 Mich. 396, 140 N.W. 2d 436. Copies of these opinions are attached hereto as Appendices A and B, respectively. The opinions of the Supreme Court of Michigan in an earlier, related case, *In re Apportionment of Legislature* are reported at 373 Mich. 250, 128 N.W. 2d 722, and copies of said opinions are attached hereto as Appendix C.

(b) GROUNDS ON WHICH JURISDICTION OF THIS COURT IS INVOKED

This is an original jurisdiction proceeding in the Supreme Court of Michigan, pursuant to the eighth paragraph of Section 6 of Article IV of the Michigan Constitution of 1963, which was commenced by the filing of a Petition by thirty-four Michigan citizens, appellants herein, requesting the Supreme Court of Michigan to review the Apportionment and Districting Plan for the Michigan Legislature which was adopted by the Commission on Legislative Apportionment on June 23, 1964. The Petition alleged that the Plan violated the Fourteenth Amendment to the United States Constitution, as well as certain provisions of the Michigan Constitution, and prayed that the Plan be declared void. On April 6, 1966, the Supreme Court of Michigan entered an order dismissing the Petition, a copy of which order is attached hereto as Appendix D. Notice of appeal from that final judgment was filed in the Supreme Court of Michigan on July 1, 1966.

The statutory provision believed to confer jurisdiction of the appeal on this Court is Title 28, United States Code, Section 1257(2). Representative cases believed to sustain the jurisdiction of this Court are *Baker v. Carr*, 369 U.S. 186 (1962); *Reynolds v. Sims*, 377 U.S. 533 (1964); *Fortson v. Dorsey*, 379 U.S. 433 (1965); *Burns v. Richardson*, 384 U.S. 73 (1966); *Wright v. Rockefeller*, 376 U.S. 52 (1964); *Gomillion v. Lightfoot*, 364 U.S. 339 (1960); *Forty-fourth General Assembly of Colorado v. Lucas*, 379 U.S. 693 (1965); *Crawford-County Bar Association v. Faubus*, 383 U.S. 271 (1966); *Williams v. Bruffy*, 96 U.S. 176 (1878); *King Mfg. Co. v. Augusta*, 277 U.S. 100 (1928); and *Lathrop v. Donohue*, 367 U.S. 820 (1961).

The validity of the Apportionment and Districting Plan of Senate and House of Representatives of the State of Michigan dated June 23, 1964, *Public and Local Acts of the Legislature of the State of Michigan passed at the regular session of 1964*, pp. 603-619, is involved in this proceeding. A copy of the Plan, in the form in which it was adopted, published and became law, is attached hereto as Appendix E.

(c) THE QUESTIONS PRESENTED

1. Whether the Michigan legislative apportionment law constitutes invidious discrimination denying appellants and other residents of Michigan equal protection of the laws in violation of the Fourteenth Amendment to the Constitution of the United States if boundary lines of legislative districts of approximately equal population are drawn for the purpose, and have the effect, of minimizing and cancelling out the votes for candidates of one political party by deliberately fragmentizing areas of voting strength of

such party and combining areas of voting strength of another party.

2. Whether the Michigan legislative apportionment law constitutes invidious discrimination, in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States, if it denies fair and effective representation to residents of certain areas of the state by establishing legislative districts of distorted, unnatural shapes which break up natural political groupings and communities of interest.

3. Whether the Michigan Supreme Court erred in holding that the Fourteenth Amendment, as interpreted by the decisions of the Supreme Court of the United States, requires adherence to a rigid districting standard of population equality to the greatest possible extent, ignoring all other concepts of fair and effective representation under the Fourteenth Amendment, and needlessly nullifying provisions of the Michigan Constitution requiring adherence to political subdivision boundary lines, compactness, regularity and contiguity.

4. Whether the Michigan Supreme Court, in this original jurisdiction proceeding, denied to appellants equal protection of the laws and due process of law in violation of the Fourteenth Amendment to the Constitution of the United States, by denying to them a hearing and refusing appellants' Offer of Proof to show that past election results were utilized for partisan purposes in the drawing of boundaries of the legislative districts in the Michigan legislative apportionment law; that districts are unnaturally shaped and do not respect either political subdivision lines or natural or historical boundary lines; that such districts designedly inflate one party's voting strength in

certain specified instances; and that such law denies to many residents of Michigan fair and effective representation in the Michigan legislature.

5. Whether appellants have been denied due process of law in violation of the Fourteenth Amendment to the Constitution of the United States because they were denied an effective means of presenting, and securing a decision upon, the question whether the Michigan legislative apportionment law conforms to the Michigan Constitution as properly applied within the scope of the United States Constitution and the guidelines established by the Supreme Court of the United States.

(d) STATMENT OF THE CASE

Material Facts

On June 15, 1964, the date of this Court's decisions in *Reynolds v. Sims*, 377 U.S. 533 (1964) and companion cases*, the apportionment plan in effect for Michigan was one which had been adopted by the Commission on Legislative Apportionment upon Order of the Michigan Supreme Court pursuant to Article IV of the Michigan Constitution of 1963. The validity of the apportionment formulae provided in Article IV had been attacked in litigation in the United States District Court for the Eastern District of Michigan, but had been upheld by that court. *Marshall v. Hare*, 227 F. Supp. 989 (1964). The decision of the District Court in *Marshall v. Hare* had been appealed to this Court, and the case was awaiting decision.

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* *WMCA, Inc. v. Lomenzo*, 377 US 633 (1964); *Maryland Committee v. Tawes*, 377 US 656 (1964); *Davis v. Mann*, 377 US 678 (1964); *Roman v. Sincock*, 377 US 695 (1964) and *Lucas v. Colorado General Assembly*, 377 US 713 (1964).

Marshall v. Hare was not among the cases decided along with *Reynolds v. Sims, supra,* on June 15, 1964. Nevertheless, on June 17, 1964, the Michigan Supreme Court, *sua sponte,* entered orders voiding the lawfully-adopted plan and directing the Commission on Legislative Apportionment to "proceed to adopt a plan * * * in accordance with the constitutional requirements and guide lines provided by the United States Supreme Court in *Reynolds v. Sims* * * * requiring that the districting and apportionment of both houses of State legislatures shall be as nearly as practicable on an equal population basis." (373 Mich. 247, 248-9, 128 N.W. 2d 721)

The June 17, 1964 order of the Michigan Supreme Court gave the Commission until 5:00 p.m. on June 19 to adopt such a plan and provided that if the Commission should be unable to agree upon a plan within the time stated, individual members of the Commission would have until 12:00 noon the following day, June 20, to submit individual plans to the court. This order explicitly provided that "further oral arguments or briefs will not be permitted by the Court."

The Commission, created pursuant to the Michigan Constitution, consisted of four members designated by the Republican party and four members designated by the Democratic party. Since they lived in widely scattered parts of the state, the time required to serve them with the orders of the Michigan Supreme Court, and to convene them in Lansing, the state capital, reduced to less than one-half day the time available to meet and comply with the order to re-apportion by 5:00 p.m. on June 19.

The Commission was unable to agree upon a plan by the deadline, and various plans were submitted to the Michigan Supreme Court by noon the following day, Saturday,

June 20. As indicated above, neither briefs nor oral argument were permitted.

The following Monday, June 22, the Michigan Supreme Court ordered the Commission to adopt the plan submitted by the Democratic commissioners (hereinafter sometimes refered to as the "Austin-Kleiner" Plan), and on June 23, 1964, that plan was so adopted by the Commission and published by the Secretary of State. The opinions of the court which were rendered at that time are set forth in Appendix C hereto.

On June 22, 1964, this Court reversed the judgment of the District Court in *Marshall v. Hare, supra,* and remanded the case "for further proceedings consistent with the views stated in our opinions in *Reynolds v. Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds.*" 378 U.S. 561 (1964) There have been no further proceedings in that case, however, the District Court having expressly deferred further action pending the outcome of this action.

On August 21, 1964, the present action was commenced by the filing of a petition in the Michigan Supreme Court, as required by the Michigan Constitution of 1963, requesting that Court, in the exercise of its original jurisdiction, (1) to review the Austin-Kleiner plan, (2) to provide for discovery and the taking of evidence, (3) to declare the plan void, and (4) to order the Commission to prepare a new plan. Insofar as is pertinent to this appeal, the Petition alleged:

> "6. The provisions of the Plan fail to provide to petitioners and other citizens of the State of Michigan fair and effective representation, and thereby deprive petitioners and other citizens of the State of Michigan of the equal protection of the laws and deny them rights without due process

of law, in violation of the Constitution of the United States, the Michigan Constitution of 1963, the statutes of the State of Michigan, the Civil Rights Act, 42 USC, §§1983, 1988, and the decisions of the Supreme Court of the United States, as more specifically set forth hereafter.

* * * * *

"10. The Plan, by employing partisan gerrymandering deprives petitioners and other Michigan citizens of their right to elect legislators in a free and unimpaired fashion, thus denying to them the equal protection of the laws as guaranteed by Article 1, Section 2 of the Michigan Constitution of 1963 and by the 14th Amendment to the Constitution of the United States. Such gerrymandering is effected by apportioning the districts without any regard for political subdivision or natural or historical boundary lines, and constructing unnaturally shaped districts for purposes other than providing fair and effective representation of voters by use of the following wrongful devices among others:

(a) Certain cities and other known concentrations of urban voting strength have been detached from the counties in which they lie and have been combined with territory in other counties in an arbitrary and unreasonable disregard of traditional district lines, political subdivision boundaries, and convenience of voters and election officials, for the purpose of consolidating party voting strength and creating Senate districts favorable to certain candidates. Specifically, this has been done in the drawing of Senate districts 17, 33, 34, 35 and 36.

(b) The Plan unreasonably and arbitrarily splits up cities and townships, in complete disregard of the convenience of the voters and election officials, and detaches single townships from

their counties, creating House districts of irregular and distorted shapes, for the purpose of partisan gerrymandering as follows:

(i) Townships where incumbents reside were unnaturally and unnecessarily combined with territory containing another incumbent in order thus to defeat one of them or force him to move away from his constituency.

(ii) Counties entitled to more than one representative, having a major metropolitan area, were carved up into districts neither compact nor square in shape, without regard to city or township boundary lines, by consolidating certain territory into areas of marginal voting strength of one political party, while deliberately combining other immediately adjacent territory in bizarre formations with extraordinarily high majorities for another political party in a manner carefully calculated to promote the partisan interests of one of the political parties, as in the cases of House districts 64, 65, 66 and 67, and House districts 90, 91, 92, 93 and 94.

(iii) Other House districts were drawn in such a way as to split up parts of cities with established patterns of political party voting, by dividing them into two or three separate pieces and combining them with other territories for the purpose of diffusing and ultimately destroying the voting power of those concentrations, as in the cases of House districts 16, 17, 28, 29, 31, 32 and 33."

How the Federal Questions were Presented

The first two questions here presented were specifically raised in the portions of the Amended Petition for Review, just quoted above. The prayer for relief in the Amended Petition requested discovery and an opportunity to present evidence in support of these allegations.

On January 14, 1965, the Michigan Supreme Court denied the prayer for discovery and taking of evidence, and also provided for the filing of briefs and oral argument.

Appellants filed a motion for reconsideration of this January 14, 1965, order, accompanied by a detailed Offer of Proof. Insofar as is pertinent here, appellants offered to produce testimony of witnesses, including the members of the Commission on Legislative Apportionment, certain individuals who assisted Democratic commissioners Austin and Kleiner in drawing the Plan, historians, political scientists, mathematicians, representatives of the major political parties in Michigan, incumbents in the state legislature in 1963-1964, and county, township, and city government officials, as well as documentary evidence consisting of memoranda, charts, statistical exhibits and maps, to prove the following facts;

> "Austin and Kleiner and others who actually participated in the drawing of the Austin-Kleiner Alternate Plan obtained and utilized extensive data and records of past voting results in each precinct, city, township and county, specifically including the results of the 1962 State Treasurer election, which data and records were compiled and tabulated by and with the support of the Democratic Party and the International Union, UAW. The purpose of utilizing such data and records by Austin, Kleiner and their aides, was the creation of an apportionment plan most favorable to the Democratic Party and its candidates.

Different variations of a plan with districts of equal population were drawn from time to time in the course of preparing the Austin-Kleiner Alternate Plan, each of which was tested by application of such data and past voting records, and such plan was successively revised and redrawn in attempts to maximize Democratic Party voting strength or to minimize Republican Party voting strength.

The draftsmen of the plan, after its adoption, openly boasted of their success in achieving their objectives and also stated openly that they intended the plan as "a negotiating document" and had not expected to be able to get it adopted in its original form.

The plan accomplishes such gerrymandering by apportioning the districts without any regard for political subdivision or natural or historical boundary lines, and by constructing unnaturally shaped districts in order to join geographically separated concentrations of voters of one or the other party or to split up certain of such concentrations.

The intentional acts of malapportionment and gerrymandering for political advantage incorporated by the draftsmen of the plan include the following:

(a) By deliberately joining areas which the 1962 election results showed to have voted for a particular party's candidates, the draftsmen drew five House districts in Genesee County which cancelled out Republican voting strength there altogether. Based on the 1962 results, all five districts would have gone to Democratic Party candidates although Republicans polled approximately 45% of the overall vote. The actual results of the 1964 contests in these districts were that all five seats went to Democrats, although Republicans polled 39% of the vote.

(b) By contrast, the same technique of joining areas of known voting behavior was employed to maximize Democratic Party voting strength in the five House districts in Kent County. There, the 1962 election results showed that two of the five seats would have gone to Democratic candidates while the Democratic Party polled approximately 40% of the overall vote. In 1964 the Democrats won their two seats handily.

(c) Similarly, the ten House districts encompassing Oakland County (plus three townships of Genesee County) were drawn in such a way that the Republicans could count on five "safe" seats while polling, according to the 1962 election results, 60% of the vote. (The actual results of the 1964 contests in these districts were that the Republican candidates took four seats while polling 50% of the vote.) This was accomplished by dividing up cities so that areas of high Republican voting strength were impacted and extra Democratic pluralities could be added to areas of marginal Republican voting strength.

(d) By crossing county lines to join together physically-separated cities which the 1962 election results showed to demonstrate Democratic Party voting patterns, "safe" Democratic seats were created in the Senate districts 33 and 34. District 33 was formed by separating the City of Manistee, the county seat of Manistee County, from the rest of its county and joining it with a group of counties extending south to include the City of Muskegon, 75 miles away. Similarly, the cities of Saginaw and Bay City, respectively the county seats for their counties, were joined together into District 34, with a few intervening townships from both counties, while the rest of the surrounding townships from both counties were formed into a horseshoe-shaped District 35.

Based upon 1962 election results, Districts 33 and 34 would be Democratic seats, while the adjoining Districts 35 and 36 would be Republican districts, although any other configuration which did not involve the joining of the cities would not have resulted in a Democratic district in either area. These four seats came out exactly as predicted in 1964, two Republican and two Democratic.

(e) In the case of Senate District 17, the City of Pontiac, the county seat for Oakland County, together with seven townships in the northwestern part of the county, was joined with all of Lapeer County in order to cancel out Republican voting strength in Lapeer County.

(f) Other House districts were drawn in such a way as to split up parts of cities which were disclosed by the 1962 election results to be strong areas of Republican party voting, by dividing them into separate pieces and combining them with other cities for the purpose of diffusing and ultimately destroying the voting power of those concentrations, as in the case of House Districts 31, 32 and 33, which cut into three parts the northwest quarter of the City of Dearborn, an area shown by the 1962 election results to have returned a high Republican vote.

(g) In certain districts, such as House Districts 43 and 51, townships where incumbent Republican legislators resided were unnaturally and unnecessarily detached from the rest of their counties and combined with territory containing another Republican incumbent in order thus to defeat one of them or force him to move away from his constituency."

Appellants also offered evidence of the functions of governmental subdivisions in Michigan and the significance thereof in achieving fair and effective representation in legislative districting.

Appellants' Motion for Reconsideration and Offer of proof was denied on February 5, 1965.

The order of April 6, 1966, dismissing appellants' Petition to Review Apportionment Plan thus holds valid the Michigan legislative apportionment law against appellants' allegations that it is repugnant to the Constitution of the United States because it denies appellants equal protection of the laws in violation of the Fourteenth Amendment, as set forth in the first two questions presented hereby. These first two questions are questions over which this Court has jurisdiction by virtue of Title 28, United States Code, Section 1257(2).

The third question here presented deals with the denial to appellants of the right of fair and effective representation guaranteed by the Fourteenth Amendment to the Constitution of the United States resulting from the erroneous interpretation and application by the Michigan Supreme Court of this Court's reapportionment decisions. The question is one of which the Court would have jurisdiction upon a petition for certiorari, under Title 28, United States Code, Section 1257(3), and the Court should consider this question together with the questions of which the Court has jurisdiction on appeal, because of its close relation to the other questions presented hereby.

The third question was raised in the pleadings and briefs in the following manner. The Amended Petition alleged that the Austin-Kleiner Plan violated certain of the provisions of Article IV of the Michigan Constitution of 1963 requiring adherence to political subdivision boundary lines, compactness, contiguity, and uniformity of shape. The Answer of appellee Hare asserted, in denial of those allegations, that

> ". . . the portions of the Michigan Constitution relied upon by petitioners in the allegations contained in paragraph 11 (I) and (II) offend the Constitution of the United States. *Marshall v. Hare,* 12 L ed 1036; *Reynolds v. Sims,* 12 L ed 2d 506."

The Answer of appellees Scholle, et al., likewise denied these allegations, asserting that the provisions relied upon by appellants were "constitutionally null and void and of no effect".

The reason for the claimed invalidity of these provisions of the Michigan Constitution, which in turn was claimed to justify the widespread violation of those provisions, was stated as follows in the Brief of appellee Hare:

> "Defendant Hare agrees that as a practical matter 100% mathematical precision in the drawing of legislative districts cannot be achieved. However, this must be the target of those who would apportion, and any built-in devices such as the county-line requirement, which impede achievement of this aim, must fail."

The brief of appellees Scholle, et al., likewise argued that the holdings of this Court required the elimination of any population disparity which could be avoided and required the consequent disregard of all other standards.

The holding of the Michigan Supreme Court on this question, although not expressed in specific words in the March, 1966 opinion is clear. The dismissal of appellants' Petition continues in effect a plan which admittedly erases county, city and township boundaries in many instances and contains many districts of irregular and distorted

shape.* The court stated in its order of June 17, 1964, that the Commission on Legislative Apportionment was to adopt a plan "in accordance with the constitutional requirements and guide lines provided by the United States Supreme Court in *Reynolds v. Sims* . . . requiring that the districting and apportionment of both houses of State legislatures shall be as nearly as practicable on an equal population basis." Upon ordering the Plan adopted on June 22, 1964, the court stated:

> "By such plan districts in both the senate and house of representatives are composed of territory containing the population as equal as the 1960 Federal decennial census permits." (373 Mich. at 254)

The result of the dismissal of appellants' Petition is to nullify the provisions of the Michigan Constitution requiring adherence to political subdivision boundary lines, compactness, contiguity and uniformity of shape. The basis of that action is that this Court's holdings in *Reynolds v. Sims, supra,* and companion cases imposed one, and only one, objective—districts of as equal population as possible.

The fourth question here presented is likewise one of which this Court would have jurisdiction upon a petition for certiorari. It was raised by appellants in their Motion for Reconsideration of the January 14, 1965, order, in the following manner:

> "8. Petitioners respectfully submit that denial of the right to obtain discovery and of the right to

---

* Of the 38 senate districts, 26 breach either a city, township or county boundary line; 6 of the remaining 12 are entirely within the Detroit city limits. Of the 110 house districts, 59 breach either a city, township or county boundary line; 32 of the remaining 51 are entirely within the boundaries of a single city or township. The many irregularly shaped districts are apparent in the maps in Appendix E hereto.

present proofs and evidence deprives them of due process of law by denying to them their opportunity to be heard.

* * * * *

10. This proceeding is the sole means authorized by the Michigan Constitution of 1963 whereby a citizen may obtain review of the Austin-Kleiner apportionment plan. For the above reasons, Petitioners respectfully submit, therefore, that the Order entered by this Court on January 14, 1965 denies to Petitioners the fair hearing and fair procedure guaranteed them by the Equal Protection and Due Process Clauses of the 14th Amendment of the United States' Constitution and of Article I of the Michigan Constitution of 1963."

As previously stated, this Motion for Reconsideration was denied on February 5, 1965, and appellants were denied an opportunity to present evidence.

The fifth question is, by its nature, one which could only be presented by the final order of the Michigan Supreme Court, and thus is raised here for the first time.

This proceeding was required by the Michigan Constitution to be commenced originally in the Michigan Supreme Court—an eight member court. Although that court on November 2, 1965, in an order signed by five of its members, granted the Petition of appellants to remand the apportionment plan to the Commission on Legislative Apportionment for further action and adoption of a plan, that Commission failed to take any further action because it deadlocked by a four to four vote on every material issue considered by it. The Michigan Supreme Court also deadlocked four to four as to further consideration of the questions presented and took no further action, with the result that appellants' Petition has been dismissed. The

November 2, 1965, order of the Michigan Supreme Court indicated that appellants' challenge of the Michigan Legislative Apportionment Plan on federal and state constitutional grounds had merit. But the April 6, 1966, order of the court dismissed appellants' Petition without further hearing or opportunity to present proofs. The challenged Plan is thus left in effect by the court.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL

Since the constitutional validity of Michigan's legislative apportionment law is at issue in this proceeding, the questions presented hereby are of vital concern not only to the parties to this case, but also to all of the people of the State of Michigan—the nation's seventh most populous state. Moreover, since this case involves the constitutional validity of gerrymandering and other allegedly unlawful techniques of districting of single-member legislative districts—practices which can occur at many levels in the representative governing bodies in this nation—the questions presented are of immediate and lasting concern to all of the people of the United States.

I.

THE MICHIGAN LEGISLATIVE APPORTIONMENT LAW CONSTITUTES INVIDIOUS DISCRIMINATION DENYING APPELLANTS AND OTHER RESIDENTS OF MICHIGAN EQUAL PROTECTION OF THE LAWS IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES BECAUSE BOUNDARY LINES OF LEGISLATIVE DISTRICTS OF APPROXIMATELY EQUAL POPULATION ARE DRAWN FOR THE PURPOSE, AND HAVE THE EFFECT, OF MINIMIZING AND CANCELLING OUT THE VOTES FOR CANDIDATES OF ONE POLITICAL PARTY BY DELIBERATELY FRAGMENTIZING AREAS OF VOTING STRENGTH OF SUCH PARTY AND COMBINING AREAS OF VOTING STRENGTH OF ANOTHER PARTY.

In *Reynolds v. Sims,* 377 U.S. 533 (1964), and companion cases, this Court held that the Equal Protection Clause of the Fourteenth Amendment was violated by state legislative apportionment schemes with legislative districts of substantially unequal populations. The Court found that the practice discriminated aganst persons in the districts of larger populations by diluting their votes and impairing their right to fair and effective representation.

The Court did not, in *Reynolds v. Sims, supra,* or any of the cases concurrently decided, deal with other forms of discrimination in state legislative apportionment. Specifically, the Court did not pass upon the constitutional validity of partisan political gerrymandering. References to the practice in the majority opinion in *Reynolds v. Sims, supra,* indicate that the prevention of gerrymandering is an objective to which the states may give consideration, so long as the requirement of substantial equality of populations among the districts is not subordinated.

The first case after *Reynolds v. Sims, supra,* in which the constitutional validity of partisan political gerryman-

dering was involved in a ruling of this Court was *WMCA, Inc. v. Lomenzo,* 382 U.S. 11 (1965), affirming *per curiam* 238 F. Supp. 916 (S.D. N.Y. 1965). The district court had upheld an apportionment plan against the claim that it embodied such gerrymandering in violation of the Fourteenth Amendment. The district court decision and *per curiam* affirmance of this Court have been cited as authority for the proposition that partisan political gerrymandering is not a denial of equal protection of the laws. (See *Bush v. Martin,* 251 F. Supp. 484, 513 (S.D. Tex. 1966) and *Kilgarlin v. Martin,* 252 F. Supp. 404, 434 (S.D. Tex. 1966).)

However, in quite another context, this Court had previously stated, in *Fortson v. Dorsey,* 379 U.S. 433, 439 (1964) that

> "It might well be that, designedly or otherwise, a multi-member constituency scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated, it will be time enough to consider whether the system still passes constitutional muster."

At issue in *Fortson* was the validity of the use of certain multi-member districts. Partisan political gerrymandering in the formation of boundary lines of single-member districts was not involved.

Then, in *Burns v. Richardson,* 384 U.S. 73 (1966), the Court made the following observation:

> "Once the District Court had decided, properly, not to impose its own senate apportionment but to allow the legislature to frame one, such judgments were exclusively for the legislature to make. They were subject to constitutional challenge only upon a

> demonstration that the interim apportionment, although made on a proper population basis, was designed to or would operate to minimize or cancel out the voting strength of racial or political elements of the voting population." (*Id.* at 89.)

This affirmatively indicated that an apportionment scheme might be discriminatory, even though made on a proper population basis. However, the Court rejected the claim that the formation of the district boundaries was designed to or would operate to minimize or cancel out the voting strength of racial or political elements of the voting population as being not supported by the facts.

We recognize that the ruling of this Court in *WMCA Inc. v. Lomenzo, supra,* appears to embody the implicit holding attributed to it by Justice Harlan. However, the majority did not, in that case, render any opinion, and the statement quoted above from the subsequent case of *Burns v. Richardson, supra,* appears to conflict with such holding.

The present case presents sharply the question of the constitutional validity of deliberate, calculated partisan political gerrymandering. That question should, we submit, receive plenary consideration by this Court.

Appellants contend that the evil of a politically gerrymandered apportionment plan is that it minimizes or cancels out the voting strength of political elements of the voting population, an effect which *Burns v. Richardson, supra,* tells us subjects the plan to constitutional challenge. The basis of such challenge is the Equal Protection Clause, which many times has formed the basis for condemnation by this Court of discrimination involving arbitrary and unreasonable classification. (e.g. *Reynolds v. Sims, supra; Brown v. Board of Education,* 347 U.S. 438 (1954); and *Yick Wo v. Hopkins,* 118 U.S. 356 (1886).)

It is clear that an apportionment law which places residents of a state in legislative districts according to their previously demonstrated political party voting behavior involves an arbitrary and unreasonable classification. Classification according to previously demonstrated political party voting behavior has no rational justification; its purpose can only be to disadvantage the voters of one political party.

Does this arbitrary classification result in a judicially recognizable injury? Appellants contend that it does; that the injury is precisely the same as that remedied in *Reynolds v. Sims, supra,* the impairment of a person's right to vote and the consequent impairment of his right to fair and effective representation.

Fair and effective representation of an individual is achieved only if he is allowed to vote in a way in which his vote is not arbitrarily or unfairly diluted. Such dilution can be caused by arbitrary, unequal weighting of votes. But it can, just as effectively, be caused by the careful arrangement of districts in such a way that voters for a particular party's candidates will always be in a minority. The vote of an individual who regularly supports that party's candidates, as well as of the independent who desires to do so, is effectively nullified, and his right to fair and effective representation is impaired.

Political party affiliation and loyalty finds its most significant expression in state legislative elections. To deny that most voters in such elections vote for their party's candidates is to deny a reality of American political life.

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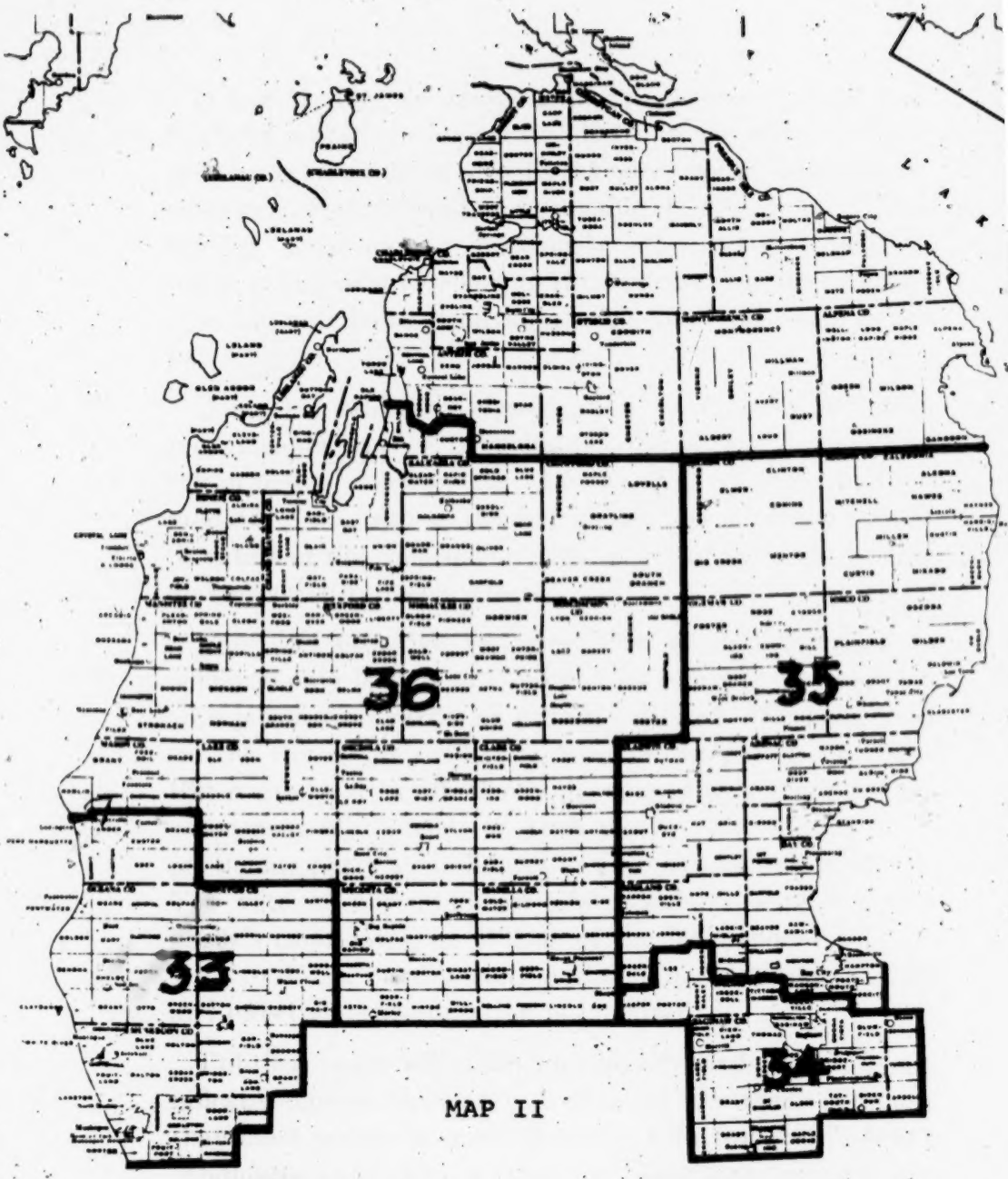

MAP II

District	Population
33	206,304
34	205,996
35	205,591
36	205,781

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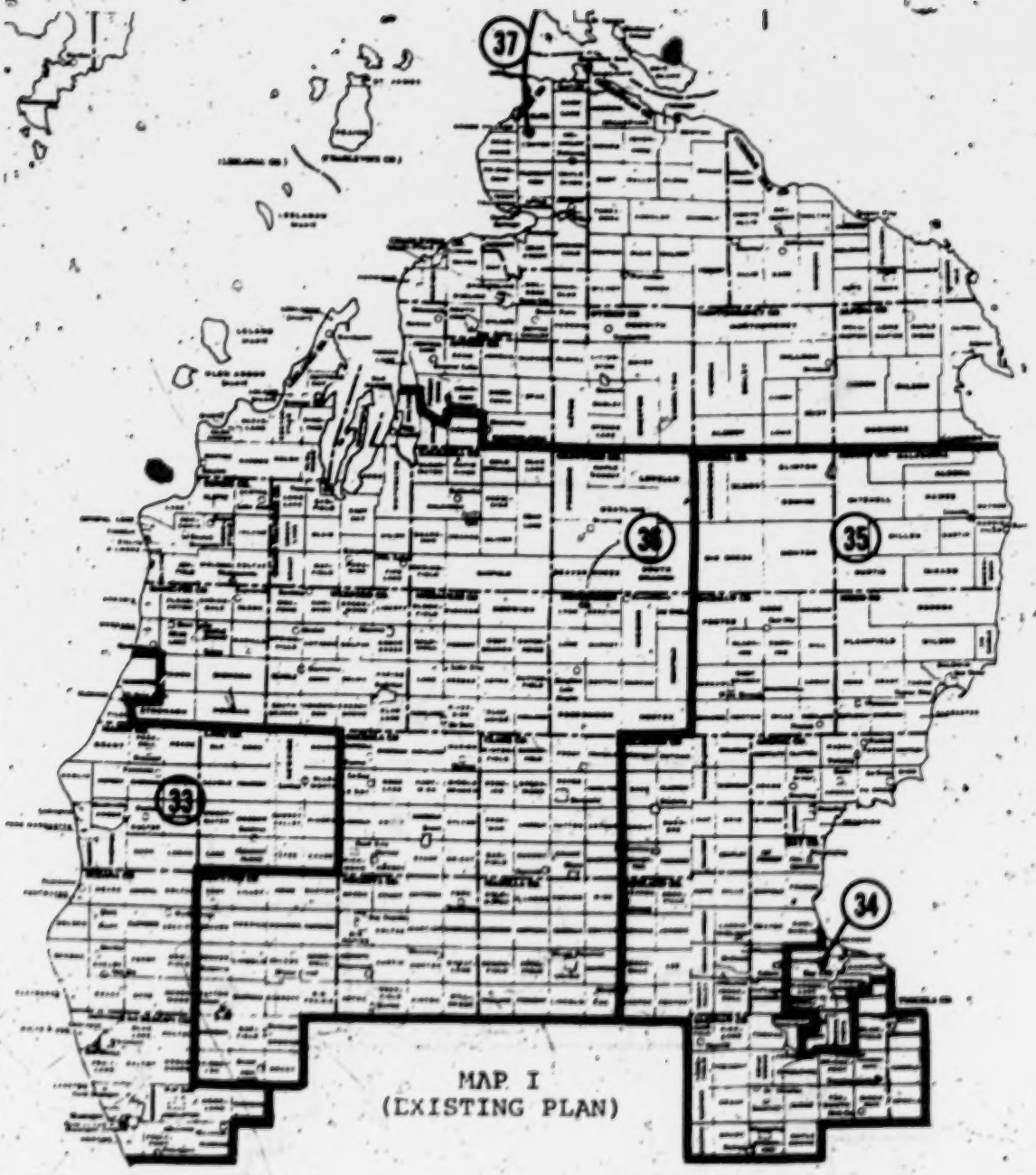

MAP I
(EXISTING PLAN)

District	Population
33	205,958
34	206,469
35	205,118
36	206,127

In the present case, appellants offered to prove that the architects of the Austin-Kleiner Plan utilized the results of the 1962 state Treasurer's race to identify the party affiliation of the voters in each township and census tract of the state, and that they then combined those areas into districts in a manner designed to result in the most legislative seats for their own party.

The maps bound in opposite illustrate one particular technique employed to achieve this result. The first map shows the configuration of Senate Districts 33, 34, 35 and 36, as provided in the apportionment plan under attack here. Based upon the past election data which the draftsmen of the plan used, districts 33 and 34 would have returned Democratic majorities, and districts 35 and 36 would have returned Republican majorities.

The second map shows how the boundary lines between districts 33 and 36 and between districts 34 and 35 can be redrawn to produce more compact districts, while splitting one less county.* As shown by the charts attached, the populations of the four districts, as drawn in the second map are well within the degree of population equality found throughout the existing plan. Indeed, this redrawing reduces the maximum population disparities among these four districts *below those found in the existing plan.*

However, as drawn in the second map, all four districts would have returned Republican majorities, according to the results of the 1962 state Treasurer's contest.

The reason for the different political result is immediately apparent. If the cities of Bay City and Saginaw are severed from the rest of their counties and are joined as

* Note that in existing district 34, the Bay-Saginaw county line is crossed twice, and that Merritt Township in Bay County is placed in district 35.

in existing district 34, the district becomes a 53% Democratic district, and district 35 becomes a 61% Republican district. By contrast, if the districts were as set forth in Map 2, both would be 54% Republican districts. *The Democratic district is made possible only by splitting up both counties to join the two cities.*

Similarly district 33 can predictably return a Democratic majority only if the City of Manistee is joined with the City of Muskegon, as in the existing plan.

It was no coincidence that, in the 1964 elections, districts 33 and 34 produced Democratic senatorial victories, while districts 35 and 36 went to Republican candidates.

In addition to the above-described examples, appellants also offered to prove that the purpose and effect of numerous other configurations were to disadvantage Republican party voters and candidates.

As this Court observed in *Reynolds v. Sims,*

> "One must be ever aware that the Constitution forbids 'sophisticated as well as simple-minded modes of discrimination.'" (377 U.S. at 563)

Gerrymandering is undoubtedly a more sophisticated form of discrimination than that condemned in *Reynolds v. Sims, supra.* However, it becomes increasingly important to guard against gerrymandering when population equality is emphasized as the controlling principle of apportionment and districting, since there are many ways in which a state can be divided into equal population districts if there are no restrictions on shape at all. If, as happened in this case, such restrictions are disregarded under the guise of attempting to attain absolute equality of population among the districts, a greater number of possible combina-

tions is possible, and if political party affiliation of the residents of certain areas is used as the basis for forming such districts, the impairment of the votes of voters for one party's candidates is not difficult to accomplish.

Appellants contend that this Court should give plenary consideration to this question and should strike down this type of invidious discrimination under the Equal Protection Clause.

II.

THE MICHIGAN LEGISLATIVE APPORTIONMENT LAW CONSTITUTES INVIDIOUS DISCRIMINATION, IN VIOLATION OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES, BECAUSE IT DENIES FAIR AND EFFECTIVE REPRESENTATION TO RESIDENTS OF CERTAIN AREAS OF THE STATE BY ESTABLISHING LEGISLATIVE DISTRICTS OF DISTORTED, UNNATURAL SHAPES WHICH BREAK UP NATURAL POLITICAL GROUPINGS AND COMMUNITIES OF INTEREST.

In *Reynolds v. Sims, supra,* this Court identified the basic aim of legislative apportionment as "the achieving of fair and effective representation for all citizens." (377 U.S. at 565-6) Elsewhere, the Court stated,

> "Full and effective participation by all citizens in state government requires, therefore, that each citizen have an equally effective voice in the election of members of his state legislature. Modern and viable state government needs, and the Constitution demands, no less." (377 U.S. at 565)

In *Reynolds v. Sims, supra,* the Court struck down one type of infringement of the right to "fair and effective

representation"—the rotten borough. In the first question presented herein, appellants request this Court to strike down another mode of infringing that right—the gerrymander. Appellants further urge the Court to strike down yet another form of infringement of that right—the deliberate fragmentation of natural political groupings and communities of interest.

Appellants invite the Court's attention to the maps appearing at pages 145a, 148a, 165a, 167a, *infra,* for specific illustration of the impairment of fair and effective representation.

Under the Michigan apportionment law, St. Joseph County is split among two senate districts, 21 and 22, in each of which the included part of St. Joseph County is subordinate. The County is similarly divided among two house districts, 42 and 45, again with the parts of St. Joseph County being subordinate. Finally, the dividing line for senate districts 21 and 22 does not coincide with the dividing line between house districts 42 and 45, with the result that residents of the townships and cities in the center of the County vote with the eastern part of the County for candidates for one house and with the western part of the County for candidates for the other house.

The same kind of fragmentizing of a county for districts in both houses has occurred in Barry County. Barry County is divided into three senate districts, 20, 21, and 23, in each of which the included part of Barry County is subordinate. The County is also divided into two house districts, 55 and 89, in each of which the included part of Barry County is again subordinate. Here, too, the boundary lines are not coincident.

A further example is the City of Dearborn, in Wayne County, which is divided into pieces of four different house districts, and two different Senate districts.

Communities are the product and combination of people —and voters. Effectiveness of representation depends upon effective recognition of the common interests of the people in their communities.

Appellants offered to introduce testimony to show that in Michigan counties, townships and cities are

> "the basic units for administration and execution, on a local level, of many of the laws of the state, such as taxation, education, welfare, zoning and land use, roads, safety and police, and courts, with the result that residents of such governmental subdivisions have strong community of interest."

Appellants also offered to introduce testimony that

> "These governmental subdivisions, especially the counties, have been historically, and are presently, the basic units for political organization within this State. The major political parties' organizations are subdivided along county lines, with the county organizations providing the necessary continuity and stability in the functioning of the party from year to year.
>
> • • • • •
>
> "The effects of adherence to governmental subdivision boundary lines are (a) to minimize the fragmentizing of such communities, thereby increasing the likelihood that residents thereof will secure fair and effective representation, and, (b) to assure orderly and simple administration of existing election laws. Conversely, the effect of widespread disregard of such boundaries in drawing of state legislative districts is to allow the fragmentizing of such units and the minimization of any effective representation thereof in the State Legislature. Adherence to county and governmental subdivision boundary lines in apportionment in Michigan does not necessarily result in an unlawful disparity between the population of the districts."

Appellants contend that fragmentizing counties and cities in both houses of the state legislature denies residents of such communities fair and effective representation on the myriad issues arising in the legislature affecting the community and administration of laws therein, since residents of the community are unable to express their majority will in selection of a representative in either house. A correlative result is the minimization or cancelling out of the voting strength of the residents of such communities. As their inability to participate effectively in selection of a representative is demonstrated in election after election, their motivation to participate at all is substantially reduced.

That this results in invidious discrimination should be apparent. By contrast, residents of other similar counties and cities which are not so fragmented, are able to make a significant expression of the community will in the selection of a representative. And that representative must recognize and endeavor to represent the interests of the community in the legislature.

Appellants urge this Court to give plenary consideration to this question and to recognize and prevent this type of unconstitutional infringement of the rights of Michigan citizens to fair and effective representation.

III.

THE MICHIGAN SUPREME COURT ERRED IN USING A RIGID DISTRICTING STANDARD OF POPULATION EQUALITY TO THE GREATEST POSSIBLE EXTENT, IGNORING ALL OTHER CONCEPTS OF FAIR AND EFFECTIVE REPRESENTATION AND NEEDLESSLY NULLIFYING THE PROVISIONS OF THE MICHIGAN CONSTITUTION REQUIRING ADHERENCE TO POLITICAL SUBDIVISION BOUNDARY LINES, COMPACTNESS, REGULARITY AND CONTIGUITY.

This Court, in *Reynolds v. Sims, supra,* held that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable" (*Id.* at 577). The Michigan Supreme Court has, in its rulings, construed this as calling for legislative districts based on a single, all-encompassing objective—districts of as equal population as possible. We submit that this interpretation is erroneous and that it presents a question warranting plenary review by this Court together with the other questions raised by this appeal.

In initially selecting the Austin-Kleiner Plan from among the several apportionment plans submitted to it by members of the Commission on Legislative Apportionment, the Michigan Supreme Court held that "1 plan only constitutes a plan for districting and apportioning" in accordance with the *Reynolds* requirement that districts "be of equal population as nearly as practicable" (373 Mich. at 253). The statistics of the Austin-Kleiner Plan, as cited in the court's opinion, reflected a ratio between the population of the largest and smallest districts of 1.01:1 in the senate and 1.05:1 in the house (373 Mich. at 252-253). One of the alternative plans, the Brucker-Huhtala-LaPorte Plan

for the senate, having a maximum ratio between districts of 1.08:1, was thus disposed of as not "of equal population as nearly as practicable." This standard was unquestionably understood by the Michigan Supreme Court as requiring districts "as equal as the 1960 Federal decennial census permits" (373 Mich. at 254). "Subject to this controlling objective", the Court found that the plan with the closest mathematical equality also complied with the requirements of the Michigan Constitution by forming districts "as compact, contiguous and regular in shape" and follows "county, city and township boundaries as nearly as practicable" (373 Mich. at 254).*

The Michigan Supreme Court has not abandoned this interpretation of the substantially equal population requirement. In remanding the Austin-Kleiner Plan to the Commission on Legislative Apportionment on November 2, 1965, the opinions of five members of the Michigan Supreme Court suggest some re-evaluation of the court's interpretation that the Fourteenth Amendment requires districts as equal as the census permits, and indicate that the valid standards of the Michigan Constitution should

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* These requirements are set forth in Article IV of the Michigan Constitution of 1963. Section 2(2) of that Article provides that senate districts consisting of more than one county shall be formed by arranging the counties "into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible . . ." Section 2(3) provides that in counties entitled to two or more senate districts, each "district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible."

Section 3 of Article IV provides that house districts "shall consist of compact and convenient territory contiguous by land." Counties not entitled to one representative "shall be combined with another county or counties." The house districts in counties entitled to two or more representatives are required to be single member districts which "follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible."

be applied if at all possible. (See 376 Mich. at 457.) But the refusal of that court, on April 2, 1966, to disturb its earlier adoption of the Austin-Kleiner Plan, renewed the singular emphasis on equal population and the resulting nullification of the Michigan constitutional standards.

The Equal Protection Clause requirement of legislative districts "as nearly of equal population as is practicable" does not mean "mathematical exactness" or legislative districts with "an identical number of residents" (*Reynolds v. Sims, supra,* at 577). Nor does it preclude the concurrent adherence to other rational standards in legislative districting as long as population is not "submerged as the controlling consideration" (*Id.* at 581). This Court has said:

> "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. . . ." (*Id.* at 578)
>
> ". . . So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature. . . ." (*Id.* at 579)

Deviations may be based on a rational state policy where they are the consequence of maintaining the integrity of various political subdivisions for the purpose of "insuring some voice to political subdivisions, as political subdivisions", or for the purpose of preventing partisan gerrymandering (*Id.* at 578-580). The Michigan Constitutional

provisions requiring adherence to county and political subdivision lines in the formation of legislative districts are so premised. (The Michigan Supreme Court has not questioned the sound rational basis underlying these state requirements, as well as the requirements that districts be compact, contiguous and regular in shape, and the November opinions of the Michigan Supreme Court recognized the continuing validity of these requirements.)

The Michigan apportionment law unquestionably achieves equality of population among districts to a unique degree. But appellants contend that the rational, and valid, state constitutional standards have been submerged and nullified in the preoccupation of the Michigan Supreme Court with attempting to obtain precisely equal population districts. While the opinion of this Court in *Reynolds v. Sims, supra,* does not say that any citizen of Michigan is denied equal protection of the laws by the non-observance of valid state standards, there is clear instruction that valid state standards such as those in Michigan must be converged with the equal population requirement. The Michigan Supreme Court, in rejecting any accommodation between the state standards and the Equal Protection Clause, has, we submit, misapplied *Reynolds v. Sims, supra.*

In so doing, the ruling of the Michigan Supreme Court is in clear conflict with *Engle v. Kerner,* 33 Ill. 2d 11, 210 N.E. 2d 165 (1965), appeal dismissed *per curiam,* 384 U.S. 30 (1966); *Yancey v. Faubus,* 251 F. Supp. 998 (E.D. Ark. 1965), affirmed *per curiam,* 383 U.S. 271 (1966); *Stout v. Bottorff,* 249 F. Supp. 488 (S.D. Ind. 1965); and *Sims v. Baggett,* 247 F. Supp. 96 (M.D. Ala. 1965), to name a few. These decisions, subsequent to *Reynolds v. Sims, supra,* show that rational state standards (e.g. adherence to county and political subdivision lines) may be utilized

and observed in a state's legislative districting to the maximum extent possible so long as the deviations in district population do not become substantial.* These decisions demonstrate that the starting point in legislative apportionment is the utilization of valid state standards, which should be given effect within the perimeter of the Fourteenth Amendment's population requirement. And this perimeter, as these decisions show, is not so tight that the district populations must be "as equal as the 1960 Federal decennial census permits." (373 Mich. at 254.)

To set up absolute population equality as the goal, as the Michigan Supreme Court has done, inescapably reduces the state standards to a nullity. Such result was not, we submit, intended by *Reynolds v. Sims, supra.* Rather, as held in *Stout v. Bottorff* and *Sims v. Baggett, supra,* rational state standards, whether constitutional or legislative in origin, are to be utilized in state legislative apportionment until the point is reached where their "application brings about an unavoidable conflict with the Constitution of the United States." *Sims v. Baggett, supra,* 247 F. Supp. at 103.

In short, the ruling of the Michigan Supreme Court, submerging rather than converging the admittedly valid and severable apportionment requirements of the Michigan Constitution, is in direct conflict with the rulings of other courts and with pronouncements of this Court. It raises the crucial question of the degree to which state

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* The maximum percentage deviation from the population mean under the Michigan law is 0.58% in the senate and 2.82% in the house. Compare the maximum percentage deviation from the population mean under the apportionment laws of other states held constitutionally valid in these cases: *Engle v. Kerner,* (Illinois) senate 7.7%; *Yancey v. Faubus,* (Arkansas) senate 13.72%; house 14.83%; *Stout v. Bottorff,* (Indiana) senate 12.77%, house 13.50%; and *Sims v. Baggett,* (Alabama) senate 25.7%.

standards may be accommodated with due regard to the Equal Protection Clause requirements, a question of substantial importance to the citizens of Michigan and other states.

IV.

THE MICHIGAN SUPREME COURT ERRED IN DENYING APPELLANTS A HEARING TO PRESENT PROOFS.

Appellants commenced this action as an original jurisdiction proceeding before the Michigan Supreme Court pursuant to Article IV of the Michigan Constitution of 1963. Thereafter, appellants offered to introduce evidence that past election results had been used for partisan purposes in the preparation of the legislative apportionment law, that districts are unnaturally shaped and do not respect political subdivision lines or natural or historical boundary lines, that certain districts designedly inflate one party's voting strength, and that such law denies to many citizens of Michigan fair and effective representation in the Michigan legislature. This offer of proof was denied.

Appellants submit that the Michigan Supreme Court erred in ruling that the taking of these proofs, or any evidence, in support of the Petition, would not be permitted. By this ruling, appellants were denied a full opportunity to be heard and were thus denied a fair proceeding in violation of the Due Process Clause of the Fourteenth Amendment.

The procedure afforded for the assertion of legal rights must provide fair opportunity to be heard before the issues are decided. *Iowa Central Ry. Co. v. State of Iowa,* 160 U.S. 389 (1896). A hearing means a reasonable opportunity to introduce evidence on the issues involved. *Hooley v. U. S.,* 209 F. 2d 219 (1st Cir. 1954), cert. den. 347 U.S. 953 (1954).

The evidence sought to be introduced by appellants, and rejected by the Michigan Supreme Court, would have shown that the apportionment law would operate to minimize or cancel out the voting strength of political elements of the voting population as set forth above. This Court, in *Fortson v. Dorsey*, 379 U.S. 433 (1965) and *Burns v. Richardson*, 384 U.S. 73 (1966), indicated that an apportionment law is subject to constitutional challenge if it is demonstrated that the law has this invidious effect. Such a "demonstration" could be made only by permitting appellants to introduce evidence, as they sought to do.

There is nothing novel about the proofs sought to be introduced by appellants. Evidence of a partisan gerrymander was introduced, and heard by the courts, in *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D. N.Y. 1963), and in *In Re Orans'*, 45 N.Y. Misc. 2d 616, 257 N.Y. S. 2d 839 (Sup. Ct., New York County, N.Y.), affirmed 15 N.Y. 2d 339, 258 N.Y.S. 2d 825, 206 N.E. 2d 854 (1965).

Similarly, the proffered evidence that the apportionment law denied to many citizens of Michigan fair and effective representation in the Michigan legislature was erroneously rejected. This Court held in *Reynolds v. Sims, supra*, that the basic objective of legislative apportionment is "the achieving of fair and effective representation for all citizens." (377 U.S. at 565-566.) Absent an inquiry into how the interests of citizens in a given state are fairly and effectively represented, no court can say whether that right is infringed by a particular legislative apportionment scheme. The proffered evidence is relevant to that inquiry.

V.

THE DEADLOCK OF THE MICHIGAN SUPREME COURT IN THIS ORIGINAL JURISDICTION PROCEEDING DEPRIVED APPELLANTS OF A DECISION UPON THE ISSUES PRESENTED AND THEREBY DENIED APPELLANTS DUE PROCESS OF LAW IN VIOLATION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The April 6, 1966, Order from which this appeal is taken, is signed by only four of the eight justices of the Michigan Supreme Court. There can be little doubt that this order is, nevertheless, final and appealable since it is an effective determination of the litigation and is not subject to further review or correction in any other state tribunal. *Market Street R. Co. v. Railroad Commission,* 324 U.S. 548 (1945). The question under consideration here is raised *only* against the possibility that this Court might be requested to hold otherwise and dismiss the appeal.

It is established that an equal division of the Michigan Supreme Court on appeal results in affirmance of the lower court decision. *Keenan v. County of Midland,* 377 Mich. 57, 138 N.W. 2d 759 (1966). However, there is no lower court decision in this original jurisdiction proceeding, which is the only proceeding authorized by the Michigan Constitution of 1963 to review the apportionment law. The result has been dismissal of the Petition without majority decision, leaving the apportionment plan immune from attack.

The right to obtain a decision from a tribunal is fundamental to the entire concept of due process. The clause "due process of law" means that there can be no proceeding involving life, liberty or property which may result in the deprivation of either, without the observance of those

general rules established by our system of jurisprudence for the security of private rights. *Hagar v. Reclamation District No. 108,* 111 U.S. 701 (1884). The right to a decision from the tribunal hearing the case is a fundamental right established by our system of jurisprudence. By its failure to reach a majority decision, the Michigan Supreme Court effectively denied individual rights as guaranteed by the Fourteenth Amendment.

We contend that the general principle of due process includes not only the right of notice, hearing, and opportunity to defend before a tribunal, but also the right to obtain a decision on the issues involved from the tribunal having jurisdiction over them. We submit that this question has never before been presented to this Court and deserves consideration at this time.

CONCLUSION

We submit that this appeal presents serious and substantial questions under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, with respect to the apportionment law of Michigan, as well as other states. The order of the Michigan Supreme Court affirmatively upheld the Michigan legislative apportionment law, thereby making the issues ripe for plenary consideration by this Court.

Unless this Court reverses the ruling of the Michigan Supreme Court that the Michigan legislative apportionment law is constitutionally valid, that law, containing numerous legislative districts deliberately gerrymandered for partisan political purposes, will operate to minimize and cancel out the voting strength of political elements of the Michigan citizenry, and many citizens of Michigan will be

denied fair and effective representation for the remainder of this decade, and quite probably for years thereafter.

If the erroneous interpretation by the Michigan Supreme Court of the *Reynolds v. Sims* requirement of substantially equal population between legislative districts is not reversed, the valid legislative apportionment requirements contained in Article IV of the Michigan Constitution of 1963 will be effectively nullified, leaving the citizens of Michigan with a legislative apportionment law which contravenes valid provisions of the Michigan Constitution of 1963.

Finally, if the ruling of the Michigan Supreme Court is permitted to stand, the Michigan apportionment law will have received judicial approval in a proceeding where the appellants were denied the opportunity for a hearing with presentation of evidence.

Probable jurisdiction should therefore be noted.

Respectfully submitted,

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August 1966.

APPENDICES

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APPENDIX A

OPINIONS OF THE MICHIGAN SUPREME COURT

November, 1965, 376 Mich. 410, 137 N.W. 2d 495, 138 N.W. 2d 16

KELLY, J. (*for remand to commission*). Under the provisions of article 4, §6, of the Constitution of 1963, petitioners filed their "petition for review" requesting that this Court: (1) review the Austin-Kleiner plan which, pursuant to this Court's order, was adopted by the commission on legislative apportionment June 23, 1964,[1] and under which plan the 1964 legislative elections were subsequently held; (2) authorize petitioners to take depositions of appropriate witnesses, including the members of the commission on legislative apportionment; (3) conduct a hearing in open court with opportunity for oral arguments; (4) declare the plan in violation of the cited provisions of the Michigan Constitution of 1963 and the Constitution of the United States, and take the following action:

(a) Rescind the order of this Court dated June 22, 1964, and declared the plan void and of no effect, for any elections subsequent to the primary and general elections of 1964;

(b) Remand the plan to the commission and order that the commission prepare and adopt a new apportionment plan which complies with the requirements of the Michigan Constitution of 1963, interpreted in the light of the constitutional requirements and guidelines established by applicable decisions of the Supreme Court of the United States.

On January 14, 1965, this Court denied petitioners' motion for discovery. February 5, 1965, motion for reconsideration having been filed, this Court entered an order scheduling the cause for oral argument on May 11, 1965, and amending the January 14, 1965, order as follows:

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[1] See PA 1964, pp 603-610.—REPORTER.

"Whether, and if so to what extent, petitioners' offer of proof should be granted and proof taken, may be briefed and will be decided after oral argument has been completed and considered."

Oral argument was held on May 11, 1965, and subsequent to said argument intervenors filed a rejoinder brief on June 21, 1965, and petitioners a surrejoinder brief on July 22, 1965.

The first question to be answered is: Should petitioners' offer of proof be granted and proofs ordered taken?

Defendants oppose petitioners' request, claiming: (1) "Petitioners' charge of political gerrymander approaches naivete" and, when the Con-Con[2] records are considered, "the present allegations of partisan gerrymandering are curious, to say the least"; (2) "This Court should not presume to 'outrun' the United States Supreme Court in formulating rules which the Supreme Court to date has declined to make"; (3) The petition is a "plea to engage in a fishing expedition"; (4) If this Court follows previous decisions of this Court the petition for discovery will be denied; (5) The disputed questions do not meet the test of relevancy and competency and the "intentions or motivations" of the commissioners are immaterial.

Defendants' objection (1): Minimizing the charge of gerrymandering, defendant Secretary of State Hare states:

"Petitioners' charge of political gerrymandering approaches naivete when it is considered that under Constitutional mandate the apportionment commission must be composed of four Democrats and four Republicans. Const 1963, art 4, §6. It being constitutionally required that the commission be selected by the political parties, it would seem implicit that partisan political considerations enter into any product of the commission. If petitioners are on sound ground in contending that an unlawful partisan gerrymander is in the Austin-Kleiner plan, then perhaps the

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[2] Constitutional Convention, 1961.—REPORTER.

apportionment commission itself must fall as being a built-in gerrymandering device."

Intervening defendants, carrying forward defendant Hare's thought that we should expect and not be surprised with gerrymandering tactics, state: "The present allegations of partisan gerrymandering are curious, to say the least. The Con-Con records reveal some interesting things, however, which do not square with the present expressions of horror," and, to sustain their point, quote, among others, Constitutional Convention Delegate and Committee Chairman John Hannah, as follows:

"'Mr. Chairman, members of the committee, I only want to reiterate the point that Judge Dehnke has made. This is a matter that received long and careful consideration by the committee. The committee felt very strongly that this apportionment commission should be, as he indicated, persons with strong political feelings, selected by the two political parties to do this specific job. • • •

"The State is divided into four districts and each party would select one member of the commission from each of the four districts. The reason for that is: in the view of our committee it is desirable that this commission first of all be partisan; secondly that it be reasonably objective; and thirdly, that it have some knowledge of all of the areas of the State for which it is going to be responsible for drawing new district lines.'"[3]

Defendants' objection (2):. Defendant Hare stresses the point under the heading "Austin-Kleiner contains no *unlawful* gerrymander" (emphasis ours), and states:

"Since early in the last century when Governor Gerry was accused of devising legislative districts to accommodate his political needs, the lawfulness of such a pratice

[3] Official record, 2 Constitutional Convention 1961, pp 2027, 2800.—REPORTER.

has been debated. To this date no court has decreed that *per se* such an alignment of election district is unlawful."

Intervenors also stress this point as follows:

"Whatever the Con-Con history, it is revealing that plaintiffs cite no precedent for the proposition that partisan gerrymandering, if proved, would constitute a violation of the Federal Constitution. Clearly, the courts have declined to so hold. * * *

"Clearly there is no basis for a conclusion that gerrymandering constitutes a Federal cause of action. What standards would be controlling are not remotely suggested by plaintiffs. No definitions are suggested. * * *

"This Court should not presume to 'outrun' the United States Supreme Court in formulating rules which the Supreme Court to date has declined to make."

Defendants' objection (3): Claiming petitioners endeavor to engage in a "fishing expedition," intervening defendants set forth petitioners' claim under the heading "Alleged 'Facts,' " as follows:

"Building surmise upon conjecture and sprinkling both with liberal doses of hindsight and circular reasoning (*e.g.*, the Democrats won so they must have gerrymanderd; they gerrymandered to win), plaintiffs would 'prove' an unlawful partisan gerrymandering.

"Plaintiffs scarcely bother to define the term—and since they deal without precedent, it is no wonder they do not.

"Essentially however, the 'factual' grievances appear to be three (1) the Democrats won the legislature—handily; (2) some Republican incumbents were obligated to run against others in the primary; and (3) certain districts are irregularly shaped. Further allegations suggest a combination of the elements."

Defendants' objection (4): Defendants call to this Court's attention four of our recent decisions, claiming that if we follow same it will result in a rejection of the petition for discovery. A resume of the facts involved in those four cases and the holdings of this court follow:

Insealator, Inc. v. Wallace, 357 Mich 233. This appeal involved the claim of a manufacturer's agent that the corporation not only refused to pay him commission, but altered its books to disguise the fact it owed him the claimed amount.

In our decision, after calling attention to the fact that Court Rule No. 35, §6 (1945),[4] provided that the deposition of an officer of a corporation "may be used by an adverse party for any purpose," we held (pp. 252, 253):

"The court offered to go through the depositions and make a ruling as to the admissibility of testimony therein. Insealator insisted that they should be admitted in their entirety under this rule. The court properly ruled them out on objection to the effect that they contained irrelevant and immaterial testimony. Opportunity was afforded counsel to use them to contradict or impeach. This counsel apparently did not care to do. No error exists by reason of their exclusion under these circumstances."

Banaszkiewicz v. Baun, 359 Mich 109. This appeal involved a suit for specific performance of an alleged oral agreement under which decedent was to leave all of his property upon his death to plaintiff.

In a 4-3 decision, this Court held (quoting syllabus 9):

"There is no conflict of purpose between the so-called dead-man's statute barring testimony of an opposite party as to matters equally within the knowledge of a deceased person, and the court rules relative to discovery permitting depositions 'of any person' as both are intended to aid in arrival at truth and justice in litigation, hence, there is no unfairness in permitting defendants and their counsel to know what plaintiff's claims are and the foundation therefor and, at the same time, not waive their right to bar plaintiff's testimony at the trial on matters equally within knowledge of deceased as to alleged oral agreement to

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[4] See currently GCR 1963, 302.4(2).—REPORTER.

leave property to plaintiff (CL 1948, §617.65 [Stat Ann §27.914]; Court Rules No 35, §6a, Nos 40, 41 [1945]).'"[5]

In *Schechet v. Kesten*, 372 Mich 346, we were confronted with the statute barring a physician from disclosing information he had obtained from a patient, and we held, in regard to discovery, interrogatories, and physician-patient privileges, as follows:

"Requirement of circuit judge of defendant physician that he answer interrogatories, put to him by plaintiff in action for libel and slander in report to credentials and executive committee of hospital in which defendant was chairman of department of surgery, which interrogatories required answers privileged from disclosure was reversibly erroneous, as the statutory privilege is an absolute bar even to the disclosure of the names of the patients not involved in the action (CL 1948, §617.62 [Stat Ann §27.911]; PA 1961, No 236, §2157 [CLS 1961, §600.2157 (Stat Ann 1962 Rev §27A.2157)])." (Syllabus 2.)

Board of Education of Presque Isle Township School District No. 8 v. Presque Isle County Board of Education, 364 Mich 605, presented the question of whether the school code had given to the county and State boards of education the power to attach or annex an inoperative school district to an operating district by direct order and subject only to winding up processes. In that case we held:

"A legislator's present recollection of what he understood as to the language enacted into law may not be used in interpreting the statute as enacted." (Syllabus 6.)

Defendants' objection (5): Intervening defendants state:

"Plaintiffs' assertion that due process requires 'a determination of disputed questions of fact on the basis of evidence' is only partially correct. The disputed questions must be *relevant* and the evidence must be *competent*. We have previously demonstrated at length, without necessity

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[5] Seee, currently, CLS 1961, §600.2160 (Stat Ann 1962 Rev §27A.2160), GCR 1963, 302.1, 310, 311.—REPORTER.

for present repetition, that the matters which plaintiffs would prove have no legal relevancy. The State and Federal standards sought to be shown simply do not exist and there certainly is no right to introduce proofs which, if true, would not establish a cause of action. Moreover, there is no right to introduce *incompetent* proofs on any issue.

"The ultimate issue in this case is whether the Austin-Kleiner plan complied with necessary constitutional requirements. This is a matter which can and must be determined from the plan alone, and/or available public records or matters susceptible of judicial notice, and not from the professed intentions or motivations of one or more commissioners."

Our comment on these five objections of defendants follow in the same sequence as listed above:

Answer to objection (1): We do not share the view of the defendants that gerrymandering was expected or condoned, or that the people through their delegates created a plan that was an invitation to both parties to select their four best gerrymanderers, who would consider the welfare of the party above the welfare of the voter or the State.

Article 4 of the Constitution shows that the delegates selected a plan which, with its adherence to county, city, and township lines, compactness, rectangular or nearly uniform or square lines, *et cetera,*[6] would make gerrymandering most difficult.

We believe that outstanding and dedicated Delegate John Hannah (President of Michigan State University), when he recommended that the commission consist of four Democrats and four Republicans, being "persons with strong political feelings," did so with the thought that each 4-member group would be capable of preventing the other one from indulging in gerrymandering.

Answer to objection (2): Petitioners answer the claim of defendants that if we would grant petitioners' request we

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[6] Const 1963, art 4, §2.—REPORTER.

would be outrunning the United States Supreme Court by calling attention to the fact that until *Baker v. Carr* (1962), 369 US 186 (82 Ct 671, 7 L ed 2d 629), claims regarding apportionment of State legislatures were not justiciable at all; that from a fair reading of recent cases[1] one can only conclude that a plan which intentionally operates to nulify the fair and effective representation of members of one particular political party is as much a denial of equal protection of the law as districts of grossly disparate population; that on March 15, 1965, the New York supreme court, New York county, in *In re Orans' Petition,* 45 NY Misc 2d 616 (257 NYS2d 839), affirmed by 15 NY2d 339 (258 NYS2d 825, 206 NE2d 854), held that gerrymandering constitutes a violation of the State's constitutional provisions, which were very similar to Michigan's; and that "The argument of defendant and intervening defendants that there is no law against gerrymandering suggests that although gerrymandering may be immoral, or unfair, or a sharp practice, nevertheless since there is no case law which says it is illegal, it should be condoned by this Court. The people of the State of Michigan are entitled to a higher standard of law.

It is not necessary for us to analyze or pass judgment on the presence or absence of Federal decisions *in re* gerrymandering. Suffice to say, there is no Federal decision that even intimates that this Court cannot or should not grant the petition if we deem it advisable.

Answer to objection (3): Petitioners' request is not a plea to be allowed to engage in a "fishing expedition" and is not limited by the three reasons set forth above by intervening defendants. This fact is established by petitioners' offer to prove the following:

"Austin and Kleiner and others who actually participated in the drawing of the Austin-Kleiner plan obtained

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[1] *Reynolds v. Sims* (1964), 377 US 533 (84 S Ct 1362, 12 L ed 2d 506); *Fortson v. Dorsey* (1965), 379 US 433 (85 S Ct 377, 13 L ed 2d 290); *Wright v. Rockefeller* (1964), 376 US 52 (84 S Ct 603, 11 L ed 2d 512).

and utilized extensive data and records of past voting results in each precinct, city, township and county, specifically including the results of the 1962 State treasurer election, which data and records were compiled and tabulated by and with the support of the Democratic party and the International Union, UAW. The purpose of utilizing such data and records by Austin, Kleiner and their aides, was creation of an apportionment plan most favorable to the Democratic party and its candidates.

"Different variations of a plan with districts of equal population were drawn from time to time in the course of preparing the Austi-Kleiner plan, each of which was tested by application of such data and past voting records, and such plan was successively revised and redrawn in attempts to maximize Democratic party voting strength, or to minimize Republican party voting strength.

"The draftsmen of the plan, after its adoption openly boasted of their success in achieving their objectives and also stated openly that they intended the plan as 'a negotiating document' and had not expected to be able to get it adopted in its original form.

"The plan accomplishes such gerrymandering by apportioning the districts without any regard for political subdivision or natural or historical boundary lines, and by constructing unnaturally-shaped districts in order to join geographically separated concentrations of voters of one or the other party, or to split up certain of such concentrations.

"The intentional acts of malapportionment and gerrymandering for political advantage incorporated by the draftsmen of the plan include the following:

"(a) By deliberately joining areas which the 1962 election results showed to have voted for a particular party's candidates, the draftsmen drew five house districts in Genesee county which canceled out Republican voting strength there altogether. Based on the 1962 results, all five districts would have gone to Democratic party candi-

dates, although Republicans polled approximately 45% of the overall vote. The actual results of the 1964 contests in these districts were that all five seats went to Democrats, although Republicans polled 39% of the vote.

"(b) By contrast, the same technique of joining areas of known voting behavior was employed to maximize Democratic party voting strength in the five house districts in Kent county. There, the 1962 election results showed that two of the five seats would have gone to Democratic candidates while the Democratic party polled approximately 40% of the overall vote. In 1964 the Democrats won their two seats handily.

"(c) Similarly, the 10 house districts encompassing Oakland county (plus three townships of Genesee county) were drawn in such a way that the Republicans could count on five 'safe' seats while polling, according to the 1962 election results, 60% of the vote. (The actual results of the 1964 contests in these districts were that the Republican candidates took four seats while polling 50% of the vote.) This was accomplished by dividing up cities so that areas of high Republican voting strength were impacted and extra Democratic pluralities could be added to areas of marginal Republican voting strength.

"(d) By crossing county lines to join together physically-separated cities which the 1962 election results showed to demonstrate Democratic party voting patterns, 'safe' Democratic senate seats were created in the senate districts 33 and 34. District 33 was formed by separating the city of Manistee, the county seat of Manistee county, from the rest of its county and joining it with a group of counties extending south to include the city of Muskegon, 75 miles away. Similarly, the cities of Saginaw and Bay City, respectively the county seats for their counties, were joined together into district 34, with a few intervening townships from both counties, while the rest of the surrounding townships from both counties, were formed into a horseshoe-shaped district 35. Based upon 1962 election results, districts 33 and 34 would be Democratic seats, while the ad-

joining districts 35 and 36 would be Republican districts, although any other configuration which did not involve the joining of the cities would not have resulted in a Democratic district in either area. These four seats came out exactly as predicted in 1964, two Republican and two Democratic.

"(e) In the case of senate district 17, the city of Pontiac, the county seat for Oakland county, together with seven townships in the northwestern part of the county, was joined with all of Lapeer county in order to cancel out Republican voting strength in Lapeer county.

"(f) Other house districts were drawn in such a way as to split up parts of cities which were disclosed by the 1962 election results to be strong areas of Republican party voting, by dividing them into separate pieces and combining them with other cities for the purpose of diffusing and ultimately destroying the voting power of those concentrations, as in the case of house districts 31, 32, and 33, which cut into three parts the northwest quarter of the city of Dearborn, an area shown by the 1962 election results to have returned a high Republican vote.

"(g) In certain districts, such as house districts 43 and 51, townships where incumbent Republican legislators resided were unnaturally and unnecessarily detached from the rest of their counties and combined with territory containing another Republican incumbent in order thus to defeat one of them or force him to move away from his constituency."

Answer to objection (4): In 1931 this Court by Court Rule No 41[8] provided:

"Any party to an action or suit may cause to be taken by deposition * * * at any time after action commenced and before trial, the testimony of any other party, or any person who has verified a pleading of another party, which is material and necessary in the prosecution or defense of the action or suit."

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[8] See, currently, GCR 1963, 302.1.—REPORTER.

Two years later this rule was construed twice by this Court. Justice WIEST, in *Nestle v. Fleming* (1933), 262 Mich 417, in construing this rule, stated (pp 418, 419):

"The party invoking the rule must definitely state the subject or subjects of intended inquiry and thus show the materiality and nature thereof, and may not, at the examination, go beyond such specifications.

"Right to take the deposition can be tested by motion to vacate the notice. The issue then is whether the reasons for the notice and the information sought disclose a *bona fide* need in framing an issue or preparing for trial. The examination must not be for the purpose of enabling one party to merely pry into the case of the other to learn its strength or weakness, but only to seek information essential to the framing of appropriate issues and preparation for trial thereof. * * *

"We must assume that the right accorded by the rule is invoked in good faith, and we cannot anticipate an abuse nor hold that possibility of abuse warrants inhibition of the right."

In *Vincent v. Van Blooys*, 263 Mich 312, this Court commented on the fact that, while (p 314),

"Court Rule No 41 was adpoted from the New York practice, * * * the case concerns a rule of court, not a statute, and the rule is an experiment in this State, no discourtesy can be imputed to this Court for failing to find and follow a precedent from the New York conflict.

"Mr. Ragland [on discovery before trial] adduces evidence of the advisability of a liberal construction (page 130). This Court, speaking through Mr. Justice WIEST, has departed from the narrow New York construction, and has taken the broader trail. *Nestle v. Fleming*, 262 Mich 417.

"Aside from its advantage to a party in discovering the opponent's claim, the rule has a public purpose which should be served in its interpretation, arising from reducing the time of the trial by narrowing the issues, obtaining admissions of fact, fixing the claims of the parties when

the incidents are fresh in their minds, and otherwise fostering accuracy and celerity of trial, and also from inducing settlements, which are made more easy when the respective claims are known. A rather liberal construction will obviate the necessity for taking the time of the court in haggling over the limitations of the examination. Experience will disclose the evils which may develop and suggest the remedy."

In *Hallett v. Michigan Consolidated Gas Co.* (1941), 298 Mich 582, holding that rules relative to discovery should be liberally construed, we stated (p 592):

"Comparatively recent procedure for compelling discovery of the facts and circumstances of a controversy in advance of joining issue or in advance of trial is well established. * * * The recent trend and purpose of statutes and court rules is to provide accurate information in advance of trial as to the actual facts and circumstances of a controversy. We have already said such rules must be liberally construed. They should promote the discovery of the true facts and circumstances of a controversy, rather than aid in their concealment."

A majority of the present members of this Court during recent years have not only caried forward the liberal policy of the last 25 years but have extended it, earning for the State the reputation of being a leader among the States that advocate liberal use of discovery.[9]

The present request for discovery is vastly different from the discovery involved in the cases which defendants cite and to which we have referred above. We are not now deciding whether a plaintiff should have help in discovery as he seeks money judgment, or a defendant receive help as he prepares his defense, but, rather, whether petitioners (34 influential citizens living in various parts of this State) should be given the opportunity to present evidence which they claim would prove that the plan this Court ordered

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[9] See GCR 1963, 301 *et seq.*—REPORTER.

adopted is not a plan of apportionment but rather a plan of malapportionment.

Previous decisions of this Court constitute no bar to petitioners' request if we deem it advisable.

Answer to objection (5): In reply to defendants' claim that "this is a matter which can and must be determined from the plan alone, and/or available public records or matters susceptible of judicial notice," petitioners answer:

"*Fortson* [*Fortson v. Dorsey,* 379 US 433 (85 S Ct 377, 13 L ed 2d 290)] states clearly that an apportionment scheme which does not disclose a mathematical disparity, nevertheless may be shown to 'designedly or otherwise • • • operate to minimize or cancel the voting strength of racial or political elements of the voting population.' Petitioners should be granted an opportunity to prove that the Austin-Kleiner Plan is such a scheme. The issue is primarily a factual one, yet this Court refused petitioners the right to present evidence and thereby place the facts before the Court. The proof required to establish such allegations must be substantial. *Honeywood v. Rockefeller* (ED NY 1963), 214 F Supp 897; *Wright v. Rockefeller* (1964), 376 US 52 (84 S Ct 603, 11 L ed 2d 512), affirming (SD NY 1962) 211 F Supp 460. As indicated by the *Honeywood Case, supra,* 'direct' evidence of the use of improper standards is the best evidence. To restrict petitioners to the official record of proceedngs, as does this Court's order of February 5, 1965, prohibits obtaining such direct evidence, since the plan was not prepared in the councils of the commission."

When this Court on June 17, 1964, entered the order that voided this Court's adoption of the Hanna Plan under date of May 26, 1964, we directed the commission on legislative apportionment to "proceed to adopt a plan • • • in accordance with the constitutional requirements and guidelines provided by the United States Supreme Court in *Reynolds v. Sims,* 377 US 533 (84 S Ct 1362, 12 L ed 2d 506) • • • requiring that the districting and apportionment

of both houses of State legislatures shall be as nearly as practicable on an equal population basis."[10]

That our words "as nearly as practicable" were strictly interpreted is shown by defendant Hare in his brief where he states:

"Defendant Hare agrees that as a practical matter 100% mathematical precision in the drawing of legislative districts cannot be achieved. However, this must be the target of those who would apportion, and any built-in devices such as the county-line requirement, which impede achievement of this aim, must fail. It cannot be denied that a mandatory and arbitrary requirement that county lines be observed in an apportionment scheme will result in some deviation from equality of population among the districts."

Intervening defendants interpreted our order to mean: "*Any* disparity which is unnecessary and avoidable is inexcusable."

Sustaining the Austin-Kleiner Plan, defendants repeatedly throughout their briefs call attention to how nearly equal in population each district is with the other, resulting in population from a high of 207,094 to a low of 205,067 in the senate districts.

Petitioners, contending that other standards, such as the adherence to county and other political subdivision boundary lines, *et cetera,* were disregarded, ask us to consider the following from *Reynolds v. Sims,* 377 US 533, 577-579 (84 S Ct 1362, 12 L ed 2d 506):

"By holding that as a Federal constitutional requisite both houses of a State legislature must be apportioned on a population basis, we mean that the equal protection clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize

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[10] *In re Apportionment of State Legislature*—1964, 373 Mich 247, 248—REPORTER.

that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

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"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underline such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering."

It is not our intention in this opinion to pass judgment upon the dispute between petitioners and defendants as to standards. However, we do agree with petitioners' contention that the mere dividing of the State into districts of equal population does not and would not condone, justify, or excuse a method or system where, by the use of previous election results, districts can be formed giving one political party advantage over the other.

Petitioners commence their brief under the heading "statement of facts," as follows:

"By way of introduction to this statement of facts, the unique nature of this proceeding must be emphasized. Despite the fact that the proceedings raise disputed questions of fact, this Court has not allowed the presentation of proofs offered by petitioners in support of their fact allegations. There is no record except the pleadings. Therefore, this proceeding resembles one in which a motion for summary judgment in favor of the defendants had been granted, and now the most favorable view must be taken of petitioners' allegations of fact and offer of proof. Thus, where relevant, those allegations of fact and the offer of proof in support thereof will, for purposes of this brief, be regarded as if actually proved."

In spite of petitioners' contentions, defendants have only presented this Court with a general denial. We have

searched the brief of defendant and the briefs of intervening defendants in vain for any specific denial of petitioners' claim, such as the planners' use of voting results as they changed and re-changed the boundary lines of districts in their endeavor to create districts most favorable to the Democratic party and its candidates.

Petitioners in their reply brief commented upon defendants' seemingly avoidance, as follows:

"Petitioners have offered direct proof of the fact that Austin and Kleiner and their aides who drew the plan used records of partisan election results, specifically the 1962 State treasurer's contest, to successively revise the districts to maximize Democratic party voting strength and to minimize Republican party voting strength. This offer of direct proof is noticeably missing from the categories of proofs which intervenors castigate as inadequate."

We are not impressed with defendants' claim that even conceding that petitioners could prove what they claim, such proof would not be relevant or competent. Conceding for the sake of argument that after considering said proof this Court would consider it irrelevant or incompetent, then certainly this Court can reject it without the fear of improper influence that might result had it been submitted to a jury.

We agree with defendants that the ultimate issue in this case should not be determined from the "professed intentions or motivations of one or more commissioners." The test should not be what they intended to do, nor what they would have liked to have done, but, rather, what did they do.

Conclusion

We are granting petitioners' request for the right to take proof and depositions because defendants have failed to present a convincing reason why petitioners' request should not be granted. In addition, we are conscious of the fact that the present apportionment plan never received a

majority vote of approval of the commissioners, nor a unanimous vote of approval of this Court; that unusual, hasty, and brief consideration was given to the plan because of pending elections;[11] that we have always given liberal construction to the rule of discovery and have held, "We must assume that the right accorded by the rule is invoked in good faith, and we cannot anticipate an abuse nor hold that possibility of abuse warrants inhibition of the right."[12]

An order will be issued providing that the depositions will be taken under the direction and supervision of the presiding circuit judge of the county of Ingham; that said depositions will be taken as soon as possible and continued on to completion without delay; that 24 copies of the report

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[11] May 26, 1964: Majority vote of our Court disapproved the Austin-Kleiner Plan and approved the Hanna Plan;

June 11, 1964: Legislature by special enactment postponed primary election from August to September 1 (PA 1964, No 280 [CL 1948 §200.51 *et seq.* (Stat Ann §6.686[1] *et seq.*, Stat Ann 1964 Current Material, p 658)]);

June 15, 1964: United States Supreme Court decision in *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506);

June 17, 1964. This Court's order giving the commission until 5:00 p.m. on June 19, 1964, to adopt a plan meeting the requirements of *Reynolds v. Sims*, with the provision that if the commission should be unable to agree upon a plan within the time stated individual members of the commission would have until 12:00 noon the following day, June 20th, to submit individual plans to the Court, and a final provision that "further oral arguments or briefs will not be permitted by the Court";

June 19, 1964 (Friday): Commission met pursuant to Court order;

June 20, 1964 (Saturday): Commission not being able to agree by majority vote on any plan by Saturday noon, one plan by the Democratic members of the commission and several plans by the Republican members thereof filed;

June 22, 1964 (Monday): Our Court ordered the Austin-Kleiner Plan to be adopted. (See 373 Mich. 247 and 373 Mich. 250.)

[12] *Nestle v. Fleming*, *supra*.

of such hearing on depositions will be filed with the clerk of the Supreme Court and placed before the members of this Court, so that this Court can reach final determination in sufficient time to not unduly impede the coming 1966 elections.

ADDENDUM, October 27, 1965.

I was assigned this case under our rotation assignment system. This addendum is being added because after originally writing under such assignment opinions have been served challenging the propriety and the right of this Court to grant discovery claiming the question was moot because the majority of this Court made known by the 1964 order that the Asutin-Kleiner Plan was confined to the 1964 election and that said plan would be a nullity thereafter.

This present contention was not referred to in my opinion nor in the pleadings, briefs, or arguments of counsel for petitioners, defendant, or intervening defendants. I disagree that we have not the right and duty to dispose of the discovery question but after studying the opinions served and realizing that of the five Justices, other than myself, who have as of this date written opinions,[13] three have expressed the thought that the commissioners should try anew to reapportion for the 1966 election. I have concluded to join with them with the understanding expressed that the commission shall immediately convene and shall conclude its work within 90 days and that we retain jurisdiction of all matters now before us, including the matter of discovery.

DETHMERS, J., concurred with KELLY, J.

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[13] Justices BLACK, O'HARA, SOURIS, SMITH, and ADAMS.

BLACK, J. *(for immediate mandate to commission).* By this paragraph 8 proceeding the Court's original jurisdiction has been duly invoked.[1] Our impending action or inaction is due to guide Michigan's governmental destiny; crucially at least for the coming second half of this decennium. And what we do *now* will determine largely whether the Court has served or failed to serve both the Constitutions to which it is supremely and unitedly bound.

The mentioned proceeding was submitted to us May 11th last on thoroughgoing briefs and oral arguments. Though many less important matters have in the interim come to submission and decision, this one remains undetermined either as to procedure or substance. In the meantime the clock is ticking off that limited number of days and weeks left for *final* districting and apportionment of the legislature in time for the elections of 1966. We have failed so far to comply with the primary mandate of said paragraph 8; referring to our obligation to order the commission on legislative apportionment to perform its duty, that is, "proceed to district and apportion the senate and house of representatives according to the provisions of this Constitution."[2] That duty, when it is finally performed and upheld on "review" under paragraph 8, will effect the districting and apportionment of the legislature for the remainder of such decennium. It should be performed in pursuance of order to be entered here, and due time for such performance should be allowed. But time is fleeting; hence these purposeful presents.

Now then, the above considered: From and after our coming November session I mean to share no longer, with other members of the Court, the responsibility for further

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[1] All references in this opinion to paragraphs by number are to those which appear in section 6 of article 4 of the Constitution of 1963. Paragraph 8 is quoted *infra*.

[2] For my view of what was intended by the phrase, "according to the provisions of this Constitution," see 372 Mich 448-456. By force of the National supremacy clause "this Constitution" includes the equality clause of the Fourteenth Amendment as well as our own equality clause. The latter appears in article 1, §1 of the Constitution of 1963.

delay of orderly disposition of this gravely consequential proceeding. Censure and upshots ignored, the present motion for entry of an essential procedural order will be tendered to the clerk for filing at that time and copies will be sent to all involved counsel.

No one, bent other than on pretense, can deny the pressures and counter-pressures of politics to which this Court has been subjected since paragraph 7 and now paragraph 8 have required action of the Supreme Court of Michigan. Last year two members of the Court voted first (May 26, 1964; 372 Mich at 480-482) to effectuate under paragraph 7 the so-called Hanna plan. Then (June 22, 1964; 373 Mich 250-255) the two voted to effectuate under paragraph 7 the so-called Austin-Kleiner plan; which last plan was the one which the Court ordered into effect for the 1964 legislative elections (see 372 Mich at 480-482; 373 Mich at 248-255). Even the baited subject of *amount of salary, to be paid in the future to Supreme Court Justices*, appeared in a measure[3] which was proposed in and passed by the senate during the current legislative session, and then was held up by the house. And this is to say nothing of what is rancorously implicit as well as explicit in the previous deadlocks of the half Republican and half Democratic commission on legislative apportionment. With respect to those deadlocks we were called upon to act, and did act provisionally (see *In re Apportionment of Legislature—1964*, 372 Mich 418; 461; 373 Mich 247), under paragraph 7 of said section 6.

The circumstances now are progressively emergent. The question of need under the Constitution for timely judicial action is foremost. The next is that the Court should dispel promptly any notion that its members are shrinking from procedural and substantial decisions on account of fear of personal or political consequences.

Pursuant to the procedure set forth in said paragraph 8, I stand for entry of an order directing the commission to

[3] See SB 364, 1965.—REPORTER.

do what is required of it and what it has not yet done, that is, "district and apportion the senate and house of representatives according to the provisions of this Constitution." That task is assigned to the commission by the Constitution; whereas our task under said section 6 is limited to supervision and seeing firmly to it that the commission proceeds to conclusion of its due duties in accordance with constitutional requirements.

Bear in constant mind that the present invocation of original jurisdiction is before us under paragraph 8 of said section 6; whereas last year's proceeding arrived under and was determined pursuant to provisional paragraph 7 of said section 6 (see *In re Apportionment of Legislature—1964,* all opinions and orders cited *supra*).[4] Now we have before us an out-and-out judicial proceeding; a proceeding which is attended automatically by those broad equitable powers which, since the handing down of *Baker v. Carr,* 369 US 186 (82 S Ct 691, 7 L ed 2d 663), the courts have utilized and are now utilizing as they go about this business of supervising, with applicable constitutional limitations in mind, the assigned duties of those who must district and apportion legislative assemblies.

Refer now to the Court's orders of June 17 and 22, 1964 (373 Mich 247, 248, 249, 254, 255). Then the time limit

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[4] Paragraphs 7 and 8 (Const 1963, art 4, §6) read as follows:

"If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the Supreme Court. The Supreme Court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section."

"Upon the application of any elector filed not later than 60 days after final publication of the plan, the Supreme Court, in the exercise of original jurisdiction, *shall* direct the secretary of State or the commission to perform their duties, *may* review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this Constitution."

was critical. The commission was directed to adopt the Austin-Kleiner plan for the imminent 1964 elections,[5] subject expressly to any paragraph 8 proceeding such as is before the Court instantly. The concluding paragraph of the June 17th order, along with the final two paragraphs of the supplementing order of June 22nd, stress the temporally ordered character of the Austin-Kleiner plan. And quoted paragraphs 7 and 8 of said section 6 made it so in any event. To quote the aforesaid paragraph of the June 17th order (373 Mich 248, 249):

"Any plan adopted by the commission on legislative apportionment or, in the event said commission is unable to agree upon a plan, any plan thereafter directed to be adopted by this Court shall be subject to the provisions of paragraph 6 and 8 of said section and article: Provided, however, That because of the necessity of insuring orderly election procedures for the year 1964, in no event will the litigation permitted under paragraph 8 of said section 6 affect, alter, change, or amend the plan adopted by the commission under either paragraph 5 or paragraph 7 of said section 6, insofar as 1964 legislative elections are concerned."

I hold (a) that it is the constitutionally *exclusive* duty of the commission on legislative apportionment to district and apportion the senate and house of representatives; (b) that that duty cannot, under said paragraph 8 or otherwise, be taken over by this Court without violating the plain directions which appear in said section 6 of article 4; (c) that the commission on legislative apportionment has not as yet performed its duty for the entire remainder of the present decennial period, and (d) that it is our peremptory responsibility under said paragraph 8 to instruct the commission as follows:

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[5] The so-called apportionment decisions, on which the Court had been waiting since March 5, 1964 (372 Mich 418), were not handed down until June 15, 1964 (*Reynolds v. Sims* through *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 US 533-765 [84 S Ct 1362-1489, 12 L ed 506-652]) and the deadline date given us by the secretary of State (373 Mich 250, 251, 253) was due to arrive in three days.

1. To proceed anew with such work and deliberation as will enable the commission to district and apportion the senate and house of representatives according to now ascertainable as well as applicable constitutional requirements, and to do so pursuant to the procedures that are exacted by said section 6;

2. To complete the work thus required of the commission within 60 days from and after the date of entry of such order.

Our order should additionally provide:

3. In event of another deadlock of the commission, continuing through expiration of such 60-day period, that the secretary of the commission should report such fact promptly to this Court with accompanying petition for instructions whereby that deadlock may be broken by such mandatory order as the Court may enter pursuant to its broad powers as on mandamus to a State officer, and

4. For specific retention of jurisdiction over the present proceeding until some "final plan" is reviewed here and found consonant with constitutional requirements.

SUMMARY

First: There remains time for contemplative work and deliberately effective action by the commission, provided we direct the commission—now—to proceed. Since the commission arrived at its time-pressured stalemate last year, a selective if constitutionally circumscribed discretion has been confided, to the districting and apportioning authorities of the respective States, by the mentioned apportionment decisions of the Federal Supreme Court. This should render the commission's task much less difficult.

Second: We should not presume that the commission will not—given time as above—agree upon and adopt a plan according to its prescribed duty. This is especially so now that controlling guidelines, formerly in bitterly contested legal doubt, have become an understood part of our Constitution by the immediate force of section 1 of the first article thereof and the final force of article 6 of the National

Constitution. Nevertheless, if it should turn out that a majority of the commission, aided thus by time and supreme authority, again cannot agree, this Court can and should break the deadlock by peremptory order framed generally to the procedure which is set forth in our general election law[4] when two or more persons, being candidates for the same constitutional office, have received an equal number of votes. A public drawing of lots, to determine what 7 members of the commission are to vote upon that necessary "final plan," will take care of any such possible repetition of disagreement.

Third: It is said that the Court should proceed now to "review," principally upon depositions to be taken, the provisionally effected Austin-Kleiner plan. I respectfully suggest that we cannot do so. The Austin-Kleiner plan is not a "final" one we may review under said paragraph 8. No "final plan" has yet been adopted for want of a "concurrence of a majority of the members of the commission." See paragraphs 5, 6 and 8 of said section 6, and the absence of the word "final" from paragraph 7. Thus, by operation of paragraph 8 and the timely institution of this original proceeding, the question of the constitutionality of the Austin-Kleiner plan has become moot. What this Court needs, prior to "review" under paragraph 8, is that which has not as yet come into being, a "final plan."

Now if the Court should attempt "review" of the provisionally adopted and nonfinal Austin-Kleiner plan, and for such purpose should authorize the taking of what bids fair to become a politically contentious and trenchantly sensational series of discovery depositions, any such movement sidewise would require constant supervision of such depositional taking on expectably regular motions and orders. Worse, it would consume more and more non-expendable weeks and months of time between this date and the deadline of next June. It would—Michigan politics considered—foreclose all chances of *final* "review" under paragraph 8 and *final* effect of any *final* plan prior to such

[4] See CLS 1961, §168.551 (Stat Ann 1956 Rev. §6.1851).—REPORTER.

deadline. And it would disgust the people of Michigan the more with their Supreme Court.

I vote for prompt entry of an order as outlined above.

Since the foregoing declaration of intention to file and serve was communicated to other members of the Court, Justice SOURIS has written again that section 6 of said article 4, along with just about all of the critical rest of said article 4, is unconstitutional. See Justice SOURIS' opinions of last year, 372 Mich 418, 461-469, and Mich 247, 257-262. At that time comment was unnecessary. Now it is imperative lest a gymnastically swinging majority of this Court is induced to take over the cliff, into the abyss of one-party partisanship, that which the Constitution refers to as the "legislative power of the State of Michigan."

Now I think all reasonable viewers of the Constitution of 1963 (distinguishing them purposely from those feverishly intense liberals who look exclusively to Washington, or in lieu thereof to their own manufactured dixits, for "the rule of law") will agree that the people of a State, choosing so to do, may validly provide by their Constitution than an appointed commission, rather than the legislature, shall regularly district and apportion the legislature of that State. The people of Michigan have done so by said section 6, and no specific clause or word of that section is pointed out as being offensive to any other constitutional provision. It is simply said that section 6, *procedural* entirely in its nature, is so intertwined with earlier sections of *substance* (said to be wholly invalid) that all are inseparable "and that the constitutional invalidity of 1 or more of said sections invalidates the remainder." (Quotation from Justice SOURIS' former opinion, 373 Mich at 259.)

Let us examine this argument; an argument which, to the time of 1964 writing, was pressed upon the Court by no one excepting Justice SOURIS. In a preliminary way, I must observe that it really is just a matter of accidental coincidence that this motion to butcher-cleave section 6 from our Con-

stitution would, if granted, leave a grateful as well as gleeful Democratic legislature pretty much free to district and apportion itself at leisurely will, just as was so disgracefully known over the years when a Republican legislature was continuously charged and continuously failed with that duty. Sirrah, it must be said again that the Supreme Court of Michigan is loftily separated from partisan politics.

The question of severability depends in the last analysis upon the will of the people themselves[7]; not upon the fragmented and abstruse utterances of convention delegates who, even as selectively and restrictively quoted by Justice Souris, touched neither directly nor indirectly upon that precise question (see *Bacon v. Kent-Ottawa Authority*, 354 Mich 159, and citations therein contained).[8] To test the question of severance of section 6 one need but point out that the section pertains exclusively to constitutional *procedure* and not to constitutional *substance*. It is fully operative with or without any preceding article 4 section of substance provided the following portion of sections 1, 2 and 3 of said article 4 (with which no Justice dare quarrel) is regarded as constitutionally intact. Such portion reads:

"Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

"Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

"Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land."

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[7] "The question in interpreting a constitution is not so much how it was understood by its framers as how it was understood by the people adopting it." 11 Am Jur, Constitutional Law, §84 page 707. For the new text, see 16 Am Jur 2d, Constitutional Law, §88, p. 274.

[8] See, also, the copious citations apeparing in *Lockwood v. Commissioner of Revenue*, 357 Mich 517, commencing at 567.

Now I am unable to find anything in section 6 which prevents due application thereof to *any* plan of districting and apportionment of the Michigan legislature which the commission, going on with its work under current guidelines, may decide to adopt and place in effect, subject of course to review, for constitutional test, under paragraph 8 of the section. So there is nothing difficult about the point raised by my Brother SOURIS. All we need do is weigh his conclusion that section 6 is inseparable from that which immediately precedes it and, therefore, that section 6 cannot be made operative and sufficient to accomplish its procedural purpose. If he is right, and I suggest he is not, then this Court has been fooling around with unconstitutional procedure, under said paragraphs 7 and 8, ever since February 4, 1964, that being the date of filing here of the first of the paragraph 7 plans. See details, 372 Mich at 419.

So far as concerns my Brother's allegation, which I now reduce in paraphrase to save a wearisome number of words, that one voting for the instrument in 1963 would have voted the other way had he believed the so-called 80-20 formula would be held subordinate to the equality clause of the first article thereof, it is sufficient to say that that kind of reasoning, if majority-accepted, would require that the Court annihilate either the *whole* of the Constitution of 1963, or at very least *all* of article 4 thereof. The latter course would mean government without a legislature with the Supreme Court really supreme. I shrink from such heady stuff.

Further, when Justice SOURIS says:

"In short I do not believe the people of this State would have delegated the apportionment of legislative power to commissioners, neither elected by the people nor selected by any of the people's elected representatives, but, instead selected by the State organizations of the major political parties, except for the fact that the proposed constitution permitted those commissioners to function only within rigid limitations imposed by constitutionally stated mathematical formulae.";

I feel obliged to rejoin that I in turn "do not believe" the people ever would have delegated the apportionment of legislative power to the legislature, again that is. (See article 5, §4, Const 1908, and the amendment thereof which was ratified at the general election of November 4, 1952.) Assuming that each of us now may state his beliefs and disbeliefs as testimony to the way a majority of those voting viewed the new instrument in April of 1963, I do not believe that a voting majority of the electors would have voted for the proposed constitution *had it not included section 6 or some separate-from-the-legislature counterpart thereof*. Surely my Brother forgets that the people of Michigan learned, over a long period of years, one thing the hard way, that is, they could not trust any legislature to district and apportion itself according to any validly imposed constitutional principle or plan which might collide with self-perpetuation in office.

This question of severability is no point of constitutional interpretation at all. It is simply a political question; whether a majority seated here wants the constitutionally appointed commission to district and apportion the legislature hereafter, or whether it wants the legislature restored to that body's former position of substantial control over its own political destiny. Which is to say in short shrift that I view with disfavor any and all attempts to strike down, for no reason of *prima facie* legal value, any part of any Constitution.

I stand as before for entry of an order as outlined above.

O'HARA, J. *(for remand to commission)*. I regret that I am unable to agree with Mr. Justice KELLY's conclusion. I accept his statement of the nature of the pending proceeding. However, I believe the function of the Supreme Court under paragraph 8, § 6, article 4, of the Constitution of 1963, is unique in our jurisprudence. It follows therefore that unique procedure to effect its terms may well result.

I think it impractical to attempt to dispose of the petition before us within the limitations of existing judicial pre-

cedent. Indeed, I must record that I believe there may exist a serious conflict between the limitation in section 2 of article 3, restricting the judicial branch to the exercise of judicial power and the duties cast upon this Court by article 4. Only the language of extension in article 3 "except as expressly provided in this Constitution," saves an irreconcilable conflict.

I hold our order of June 17, 1964, and its supplement of June 22, 1964, were conditional as clearly as they could be made conditional by express language.[1] The language was not included idly.

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[1] *June 17, 1964*: "The Court's orders of February 6, 1964 and of May 26, 1964, authorizing and directing procedures to be followed under the 7th paragraph of section 6 of article 4 of the Constitution of 1963, are modified to the following extent:

"The commission on legislative apportionment is directed to proceed to adopt a plan for districting and apportioning the senate and house of representatives in accordance with the constitutional requirements and guidelines provided by the United States Supreme Court in *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506); *WMCA, Inc., v. Lomenzo, Secretary of State*, 377 US 633 (84 S Ct 1418, 12 L ed 2d 568); *Maryland Committee for Fair Representation v. Tawes, Governor*, 377 US 656 (84 S Ct 1442, 12 L ed 2d 595); *Davis v. Mann*, 377 US 678 (84 S. Ct 1453, 12 ed 2d 609); *Roman v. Sincock*, 377 US 695 (84 S. Ct. 1462, 12 L ed 2d 620); and *Lucas v. Forty-Fourth General Assembly of the State of Colorado*, 377 US 713 (84 S Ct 1472, 12 L ed 632), decided June 15, 1964, requiring that the districting and apportionment of both houses of State legislatures shall be as nearly as practicable on an equal population basis. The commission is allowed until 5 p.m., Friday, June 19, 1964, to adopt a plan in accordance with said constitutional requirements. In the event the commission is unable to agree upon a plan, each member of the commission, individually or jointly with other members, may submit additional proposed plans to this Court within the time limit of 12 noon, Saturday, June 20, 1964. Further oral arguments or briefs will not be permitted by the Court.

"Any plan adopted by the commission on legislative apportionment, or, in the event said commission is unable to agree upon a plan, any plan thereafter directed to be adopted by this Court shall be subject to the provisions of paragraphs 6 and 8 of said section and article: Provided, however, That because of the necessity of insuring orderly election procedures for the year 1964, in no event will the litigation permitted

(*Continued on next page*)

The primary responsibility of the districting and apportionment of this State was constitutionally imposed upon the commission on legislative apportionment. It should discharge its duty.

I voted to direct the commission to adopt the alternate Austin-Kleiner plan because it then most closely complied with the basic Federal mandate to apportion both houses of the State legislature as nearly as possible on a "one-man—one-vote" basis. This was the *sine qua non* of Federal constitutionality.

The State constitutional requirements[2] that the geographic integrity of senatorial districts existing at the time of reapportionment remain unaltered; that the single member representative districts be compact, contiguous, and as nearly square in shape as possible; that representative

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(*Continued from preceding page*)

under paragraph 8 of said section 6 affect, alter, change, or amend the plan adopted by the commission under either paragraph 5 or paragraph 7 of said section 6, insofar as 1964 legislative elections are concerned."

June 22, 1964: "This matter having been brought to this Court under the provisions of article 4, section 6 of the Constitution of the State of Michigan, and various plans having been heretofore submitted under said article and section by the members of the commission on legislative apportionment, and the Court having given due consideration to the matters so brought before it, THEREFORE, IT IS ORDERED that the commission on legislative apportionment be, and it hereby is, directed to adopt and publish forthwith, as provided in section 6 of article 4 of the Constitution of the State of Michigan of 1963, the Austin-Kleiner Plan filed May 11, 1964 which plan shall be placed into effect for the primary and general elections of 1964 irrespective of whether or not said plan shall be challenged upon the application of an elector pursuant to the final paragraph of said section 6 of article 4.

"Considering the limited time which remains for the giving of notices of 1964 legislative elections, no motion or application for a stay of this order will be entertained by this Court. Any person deeming himself aggrieved by this order may, for the purposes and requisites of USSC Rules 18, 50, and 51, proceed to move or apply forthwith for a stay pursuant to said rules, in the same manner as if he had previously and vainly moved or applied to this Court for such stay."

[2] Const 1963, art 4, §§2, 3.—REPORTER.

areas consisting of more than one county, entitled to more than one representative, be divided into single member districts as equal as possible in population but adhering to county lines, I do not believe have yet been considered by the commission. These guidelines, while they cannot supersede the basic equality of population factor, may be considered. Whether these State constitutional requirements are infirm by reason of their unseverability from the now known federally unconstitutional 80-20 formula, I do not pass upon. Nor need this issue be passed upon here. Federally constitutional or not, they are still sensible, voter-expressed guidelines for legislative districting and apportionment. If they are respected, and if determined effort is made to effect them, then much of the alleged partisan political districting in the conditionally approved plan could be eliminated.

I would remand the conditionally approved alternate Austin-Kleiner plan to the commission for further consideration in light of the additional guidelines set forth herein. I would retain jurisdiction of the pending cause. If within 60 days of our Order of Remand, the commission has not agreed on a plan, I would direct that all plans be resubmitted to this Court for our further action in relation thereto. All without prejudice to our ultimate disposition of the pending "petition for review." No costs.

ADAMS, J. *(for remand to commission).* I agree that this matter should be remanded to the commission on legislative apportionment. Not until June 15, 1964, with its decision in *Reynolds v. Sims,* 377 US 533 (84 S Ct 1362, 12 L ed 2d 506), did the United States Supreme Court state even the basic standards to be followed in apportionment of State legislatures. Chief Justice Warren recognized this fact, saying (p 559):

"Of course, in these cases *we are faced with the problem* not presented in *Gray*[1]—that *of determining the basic*

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[1] *Gray v. Sanders,* 372 US 368 (83 S Ct 801, 9 L ed 2d 821).—REPORTER.

standards and stating the applicable guidelines for implementing our decision in *Baker v. Carr.*" (Emphasis supplied.)

On June 17, 1964, we instructed the commissioin on legislative apportionment to devise a plan in accordance with the standards and guidelines furnished by the United States Supreme Court. The commission was allowed until 5 p.m., Friday, June 19th, to adopt such a plan. In the event the commission failed to reach agreement within that time, the individual members were allowed to submit plans by 12 noon of the next day. This brief period was dictated by the impending 1964 elections. The secretary of State had informed this Court that orderly elections would be impossible unless a plan was ordered and placed in effect by Thursday, June 25, 1964. See *In re Apportionment of Legislature—1964*, 373 Mich 250, 253.

The four Democratic members of the commission had foreseen the overriding guidelines in *Reynolds v. Sims* and had, on May 11, 1964, submitted to this Court the alternate Austin-Kleiner plan based upon the formula of one man-one vote. The four Republican members of the commission apparently had not foreseen this development. At any rate, they did not submit a plan in accordance with that formula. During the brief time allowed the commission to attempt to devise a plan in accordance with *Reynolds v. Sims*, the Democratic members made no revisions or changes in the alternate Austin-Kleiner plan they had submitted May 11, 1964. The Republican members were unable to devise a plan that met the Federal standard.

It may be proved that the alternate Austi-Kleiner plan is the only feasible one for districting the State legislature in accordance with Federal standards. However, I believe the entire commission should be afforded an opportunity to consider the standards and guidelines furnished by the United States Supreme Court and so devise the best plan it can. It did not have that opportunity in the brief time given it in June of 1964.

While the United States Supreme Court iterates and reiterates that "population is • • • the controlling consideration in the apportionment of seats in the particular legislative body" (*Reynolds v. Sims, supra,* 581), the Court does recognize other standards and guidelines which either are to be or may be applied. Those standards and guidelines can best be determined from a thorough reading and rereading of *Reynolds v. Sims.* It may be helpful, however, to point out that the Court does not approve gerrymandering. These quotations from the majority opinion in *Reynolds v. Sims* should suffice:

"The existing apportionment, and also to a lesser extent the apportionment under the Crawford-Webb act, presented little more than *crazy quilts,* completely lacking in rationality, and could be found invalid on that basis alone." *Ibid,* 568. (Emphasis supplied.)

"Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering." *Ibid,* 578, 579.

"And *a State may legitimately* desire to *construct districts* along political subdivision lines *to deter the possibilities of gerrymandering.*" *Ibid,* 581. (Emphasis supplied.)

Going to the question of permissible State standards, it is to be noted that the Court said:

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme." *Ibid,* 578.

Recently, in *WMCA, Inc. v. Lomenzo,* 382 US 4 (86 S Ct 24, 15 L ed 2d 2), the United States Supreme Court affirmed the judgment in *WMCA, Inc. v. Lomenzo* (DC SD NY), 238 F Supp 916. Of this action, Mr. Justice Harlan stated:

"The three-judge court • • • rejected contentions that apportioning on a basis of citizen population violates the

Federal Constitution, and that partisan 'gerrymandering' may be subject to Federal constitutional attack under the Fourteenth Amendment. In affirming this decision, this Court necessarily affirms these two eminently correct principles."

I do not regard the affirmance in *Lomenzo* as a definitive statement of the position of the United States Supreme Court on gerrymandering, especially in view of *Reynolds v. Sims, supra,* and *Fortson v. Dorsey,* 379 US 433, 439 (85 S Ct 498, 13 L ed 2d 401). In this latter case, the Court stated:

"It might well be that, designedly or otherwise, a multi-member constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. This question, however, is not presented by the record before us."

At any rate, it seems clear that a State may forbid political gerrymandering, and I interpret the provisions of the Michigan Constitution with regard to compactness, shape, et cetera, as being precisely for that purpose. Though the Federal standards are overriding and must be followed, I see no reason why the standards and provisions in our own State Constitution should not be applied if it is possible to do so. I do not regard the failure of the 80-20 formula as having destroyed these standards. The commission should apply them, if at all possible, always remembering that the United States Supreme Court said:

"We hold that, as a basic constitutional standard, the equal protection clause requires that the seats in both houses of a bicameral State legislature must be apportioned on a population basis." *Reynolds v. Sims, supra,* 568.

I will vote in favor of a suitable order to remand to the commission on apportionment.

SOURIS, J. *(for adjournment of proceedings).* Consistent with the judgments I announced on April 10, 1964, in *In re Apportionment of State Legislature—1964,* 372 Mich 418, 461-469, and again on June 24, 1964, in *In re Apportionment of State Legislature—1964,* 373 Mich 247, 257-262, I would deny relief requested in the petition now before this Court purportedly pursuant to authority found in the eighth paragraph of section 6, article 4, Constitution of 1963. It was my judgment in 1964, as it is now, that except as set forth in the margin,[1] none of the first six sections of article 4 legally survived our finding that the 80-20 formula for apportioning the senate and the .7% formula for apportioning the house violated the equality clause of the Fourteenth Amendment of the United States Constitution. My reasoning can be found in my separate opinion of June 24, 1964 in *In re Apportionment of State Legislature—1964,* 373 Mich 247, 257-262.

While this Court's majority (the Chief Justice and Justices BLACK, SMITH, O'HARA and ADAMS) did not discuss the issue of severability in the June, 1964, opinions reflecting its decision (see the Chief Justice's opinion at 373 Mich 250, 251 and Justice O'HARA's concurring opinion at 373 Mich 250, 255), by that decision the majority rejected, *sub silentio,* the contention I made first in my opinion of April 10, 1964, 372 Mich 418, 461-469, and which I repeated in my opinion of June 24, 1964, 373 Mich 250, 257-262, that most of the first six sections of article 4 of the Constitution of 1963, including all of section 6 which purported to authorize creation of the legislative apportionment commission and

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[1] "Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

"Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor. * * *

"Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population."

the procedures for Supreme Court review of its works, were invalid because legally inseparable from the constitutionally invalid apportionment formulae of article 4. With due respect for my colleagues' judgment, I cannot join now, as I could not in June of 1964, in any decision of this Court which in my judgment erroneously perpetuates the legislative apportionment commission notwithstanding the constitutional invalidity of its creation.

I cannot accept the suggestion, implicit in the Court's 1964 decision and in its current decision, that the people of this state intended the legislative apportionment commission, the members of which are selected by the two or three major political parties of the State, to wield such extraordinary powers of government without the precise limitations the people attempted invalidly to impose upon the commission in the form of the 80-20 and the .7% formulae, limitations which the constitutional convention debates demonstrate were crucial to the delegate majority's willingness to repose the decennial task of reapportionment in the commission.

Delegate Yeager, a member of the convention's legislative organization committee,[2] expressing his opposition to a proposal to permit the house of representatives to be apportioned upon a population basis with no greater population variance between districts than 15%, said the following:

"The reason I could not support this amendment is because in establishing the apportionment commission before our committee to take care of the periodic reapportioning on the basis of the census, we made the commitment and came up with the proposition that we would allow no discretion or very little discretion to such an apportioning body, and it would simply be a physical act of following a specific, well defined formula within the constitution. And this was the basis and the theory upon which the apportioning commission was established. This does not take

[2] 1 Constitutional Convention Record, p. 99.—REPORTER.

away that discretion. As a matter of fact, it allows a great deal of discretion, and for these reasons I could not support this proposition relating to a population basis in the house." 2 Constitutional Convention Record, p 2140.

Shortly thereafter, in support of his own proposal to increase the house formula from .7% to .75%, a proposal which did not pass, Delegate Yeager said:

"As I stated earlier, when the Cushman-Hodges amendment was up, one of the stipulations the committee went into quite thoroughly was in having an apportionment commission that was going to be working within the Constitution with defined formulas which would allow as little discretion to such a commission as possible. This was done frankly to eliminate political trading as much as possible within this commission. We feel that this formula of allotting the first seat based on the .75% and distributing the balance of the seats on equal proportions is a definable formula, and leaves very little discretion with that body. The minority report, on the other hand, would have left a great deal of discretion with that body, and if you drew the lines one way you got an entirely different deviation from the other:" 2 Constitutional Convention Record, p 2142.

The report of the legislative organization committee to the convention, which accompanied the committee's proposal of the subsequently adopted apportionment formulae, described the committee's objectives in these terms:

"The majority of the committee feels this plan offers many advantages. It is responsive to population shifts so that the precise balance of population and area can be maintained. It limits considerably the discretion of the apportioning commission because it is based on a clearly stated formula rather than vague guides. Most important, the plan achieves precisely what it is designed to accomplish, a blend of population and area factors in a logical and effective way." 2 Constitutional Convention Record, p 2036.

Delegate G. E. Brown emphasized the importance of limiting the proposed legislative apportionment commis-

sion's discretion in comparing a committee's proposal that the method of equal proportions be used in apportioning the house with a counter proposal made by that committee's minority members:

"Now, in the discussion of the committee in arriving at a decision to use the method of equal proportions after setting up the legislative areas at 7/10 of 1 per cent, the committee was concerned with minimizing the discretion which an apportioning body or commission might exercise with respect to the assignment of seats after the first initially given, not only for this decennial census, but for every decennial census. It was felt that a formula that will eliminate, to the extent possible, discretion in the apportioning body will prove to be a fairer and more equitable way of distributing house seats, not permitting the gerrymandering and the malapportionment that can exist when a great deal of discretion is left to the apportioning body, which up until the time we adopted Committee Proposal 79, of course, was the legislature. * * *

"The second point is that there is a discretionary assignment of the additional seats under the minority proposal. In each case it leaves almost complete discretion to the apportioning body insofar as the adjustment of initially setting up the districts, and then secondly, assigning the additional seats. Too, by using the method they use, the deviation should be limited on an absolute basis; but in our case the legislative areas are set up by a certain formula, the additional seats are assigned by a priority list." 2 Constitutional Convention Record, pp 2132, 2133.

Judge Dehnke, another delegate, described the role of the proposed legislative apportionment commission in these terms:

"If the proposal for the apportionment commission is adopted, the Constitution itself will set up pretty strict rules to govern the determination of this commission. The commissioners will not be left free to ramble at will. And it's a matter of the decision by each member within those

prescribed limits that is important, and we won't be involved in calling in any adding machine to make the computation." 2 Constitutional Convention Record, p 2021.

Finally, Delegate Plank described the proposed commission's role accurately, as well as trenchantly, in the following colloquy with Delegate Danhof:

"*Mr. Danhof:* Now, I further take it from the makeup of this particular commission, being 4 members from each of the political parties—and we will stick with 2 since we don't have a third one getting close to 25 per cent of the vote—that as a very practical matter, if we put 4 Republicans and 4 Democrats together in a room and tell them to come up with a plan, there's going to be a little horsetrading going on in order to come up with a plan. I mean, was this some of the philosophy that was behind the committee's thinking?

"*Mr. Plank:* Well, we had both groups in our committee, and it's pretty difficult to come up with much horsetrading with the formulas we have so designed." 2 Constitutional Convention Record, p 2024.

Upon completion of its work, the convention adopted an Address to the People for distribution before the election on the question of adoption of the proposed constitution. In the preface thereto, the legislative apportionment commission's process of apportionment was characterized "as mathematically exact a system as possible for assigning a prescribed number of seats in each chamber." 2 Constitutional Convention Record p 3359. The address speaks in terms of "providing the formula for the apportionment of senate seats" and "the application of a mathematical formula to the population of each of the previously established representative areas." 2 Constitutional Convention Record, pp 3369, 3370.

But even without the benefit of these forthright descriptions, from the convention debates and the Address to the People, of what was done to make certain the legislative apportionment commission's powers would be rigidly pro-

scribed by the formulae we have determined to be constitutionally invalid, the document itself dispels any notions to the contrary. See sections 2 and 3 of article 4 set forth in the margin.[3] The simple truth is this: If anyone in this State voted for or against the proposed constitution because he believed the legislative apportionment commission would have any significant discretionary authority, he could not have read, with any understanding, the proposed consitution's article 4 language, the Address to the People or the Preface thereto. Furthermore, if there were any astute electors who believed, as some most certainly did, that the 80-20 formula and the .7% formula ultimately would be declared constitutionally invalid, but who nonetheless voted for the proposed constitution that first Monday in April of 1963, it hardly can be suggested seriously that they would have believed or intended that the legislative apportionment commission nonetheless would survive such declaration of unconstitutionality in order to preside over the apportionment of the legislative power of this State guided only by the Federal constitutional language of equality which had not yet been defined judicially with regard to its applicability to legislative apportionment by any court with authority in this State.

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[3] "Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

"In districting the State for the purpose of electing senators after the official publication of the total population count of each Federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the State's population as shown by the last regular Federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the State's land area computed to the nearest one-one hundredth of one percent.

"In arranging the State into senatorial districts, the apportionment commission shall be governed by the following rules:

"(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total appor-

(*Continued on next page*)

In short I do not believe the people of this State would have delegated the apportionment of legislative power to commissioners, neither elected by the people nor selected

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tionment factors of such counties bears to the total apportionment factors of the State computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

"(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the State computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

"(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous and as nearly uniform in shape as possible.

"Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

"Each county which has a population of not less than seven-tenths of one percent of the population of the State shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the State shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the State's population. Each such representative area shall be entitled initially to one representative.

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by any of the people's elected representatives but, instead, selected by the state organizations of the major political parties, except for the fact that the proposed constitution permitted those commissioners to function only within rigid limitations imposed by constitutionally stated mathematical formulae. Nor can I believe that the people of this State would have intended that, in the event the mathematical formulae were declared unconstitutional, the commissioners selected by the political parties would be empowered to allocate the legislative power of the State on the basis of a then undefined Federal constitutional standard of equality.

For these reasons, it was my judgment in 1964, as it is now, that the legislative apportionment commission no longer exists as a constitutional body exercising powers under article 4 of the Constitution of 1963.

The legal effect of what this Court did in 1964 was to require the legislative elections of that year "to be conducted in districts set forth in the alternate Austin-Kleiner

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"After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

"Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

"(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

"(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

"Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines."

plan and the State's legislative power to be apportioned as provided therein, not pursuant to any of the provisions of section 6 of article 4 of the Constitution of 1963, but rather in exercise of this Court's general equitable power to provide by judicial decree a provisional legislative reapportionment pending valid legislative or constitutional enactments providing for periodic reapportionment." 373 Mich 250, 261, 262. In the interim, however, no action has been taken, either by the legislature elected pursuant to that alternate Austin-Kleiner plan or by the people of this State, to adopt legislation or to amend the Constitution of 1963 to provide for a permanent valid plan for periodic reapportionment. As I view the current situation, it is too late, as a practical matter, for the people to initiate either corrective legislation or constitutional amendment. See the requirements for popular initiative of legislation in section 9, article 2, and for constitutional amendment by petition of the people in section 2 of article 12.

Therefore, unless the legislature itself acts promptly to provide by legislation or by constitutional amendment for legislative reapportionment at the very least for the 1966 election, there will be no valid legislative districts for that election excepting only as this Court might be required to exercise again its general equitable powers to provide another provisional legislative reapportionment plan for one year (as was judicially ordered for New York and affirmed on October 11, 1965 by the United State Supreme Court in *WMCA, Inc. v. Lomenzo*, 382 US 4 [86 S Ct 24, 15 L ed 2d 2]; *Travia v. Lomenzo*, 382 US 9 [86 S Ct 49, 15 L ed 2d 10]; and *Screvane v. Lomenzo*, 382 US 11 [86 S Ct 90, 15 L ed 2d 15]), or for two years (which was the legal effect of what this Court did in 1964) or for such other period as this Court may determine necessary to permit adoption of an appropriate law or constitutional amendment and election of a legislature thereunder.

Under the best of circumstances, little time remains for legislative action. Whatever is done, be it by statute or by constitutional amendment, it must be effective at least seven weeks before the August 2, 1966, primary, by

which time candidates for nomination to legislative office must qualify. CLS 1961, §168.534, as amended by PA 1963 (2d Ex Sess), No 57 (Stat Ann 1965 Current material §6.1534), and CLS 1961, §168.551, as amended by PA 1963 (2d Ex Sess), No 57 (Stat Ann 1965 Current Material §6.1551). If the legislature undertakes to accomplish this current task of reapportionment by constitutional amendment, two-thirds of the members elected to and serving in each house must agree upon any such proposed constitutional amendment and such proposal must be submitted to the electors, in this instance because of time necessity, at a special election to be held not less than 60 days after agreement by the legislature and at least 45 days before the amendment must become effective if it is to apply to the 1966 primary and general election. See section 1, article 12, Constitution of 1963.

While it may be argued that statutory action effectively is precluded by this Court's 1964 decision in which the legislative apportionment commission is treated "as if" it continued in legal existence, perforce of constitutional origin and, therefore, beyond statutory command by the legislature, that decision, whether legally right or wrong, is no obstacle to the legislature's proposal of a constitutional amendment to rectify the egregious errors made by the Constitutional Convention of 1963 and by the people themselves in adopting the Constitution of 1963 with its invalid article 4 provisions. Sooner or later a constitutional amendment must be adopted to provide Michigan with a permanent method for periodic legislative reapportionment, hopefully one which will not again regularly inject the judiciary into what is essentially a legislative function of government (*Reynolds v. Sims* [1964], 377 US 533 [84 S Ct 1362, 12 L ed 2d 506]) excepting only in performance of the judiciary's traditional role of adjudicator of litigation between contesting parties. Until such a constitutional amendment is adopted, it should be evident from these current opinions that this Court will be decreeing legislative apportionment annually or biennially. Unless such a constitutional amendment is adopted promptly, this Court will have to prescribe a plan of legislative apportion-

ment for 1966, either by resort to what I consider legally improper reference back to the commissioners designated by the major political parties pursuant to section 6 of article 4 or by exercise again of our general equitable powers in order to avoid disruption of the legislative process.

As indicated in the forepart of this opinion, I would deny the relief requested by petitioners. They have proceeded under section 6 of article 4 of the Constitution of 1963, a provision no longer valid. Furthermore, petitioners' principal claim against the alternate Austin-Kleiner plan, adopted by this Court in 1964, is that it comprises a political gerrymander. Because I view our 1964 action, as I did when it was taken, as merely a judicial decree of provisional reapportionment for that year's legislative elections[4] without commitment to further judicial decree of its use in future elections in the event appropriate statutory action or constitutional amendment were not accomp-

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[4] While both Justices BLACK and O'HARA now read our second order of June 17, 1964 as providing a legislative reapportionment plan only for the year 1964, there is no basis in that order for such a reading. The order purports to be entered under paragraph 7 of section 6 of article 4, which paragraph contemplated adoption of a plan to be used in every legislative election thereafter until the succeeding decennial reapportionment. Furthermore, the order specifically provides that any plan adopted pursuant thereto would be subject to the judicial review provided by the eighth paragraph of section 6, article 4, but, because of time limitations, the order provided that such review under paragraph 8 would not affect the plan's use in the 1964 election. Unless that decretal language was merely doubletalk, it surely meant that any plan adopted would be subject to paragraph 8 review, but only with regard to use of the plan in elections subsequent to 1964. If the plan to be adopted pursuant to that order of July 17, 1964, were intended by the Court's majority only for use in 1964, as now suggested by my Brethren, then why did they provide for review thereof, but only after the 1964 election. Indeed, where in paragraph 7 of section 6 of article 4, pursuant to which they purported to be acting, is the Court given any right to order a plan adopted for one year only? Such right exists only in the exercise of our general equitable powers, but those powers could be exercised by the Court only after a finding that section 6 was constitutionally invalid. That is precisely what I urged the Court to find in April (372 Mich 518, 461-469) and in June (373 Mich 250, 257-262) of 1964 and what I again urge upon the Court.

lished, such claims of political gerrymander need not be considered by this Court. Notwithstanding the foregoing, I would not dismiss the proceedings. I would, instead, treat the petition as one seeking to invoke our general equitable power to provide by judicial decree a provisional legislative reappportionment for the year 1966 or until adoption of valid statutory or constitutional enactments providing for periodic legislative reapportionment. In order to accord the legislature time within which to take corrective action such as indicated above, I would adjourn further proceedings in this matter until February 15, 1966, or until the further order of this Court.

SMITH, J. *(for dismissal of petition)*. The opinion of Mr. Justice KELLY comprehensively details the original positions[1] of the respective parties. The gist of petitioners' claim, seen most plainly from the offer of proof, is that the apportionment plan ordered by this Court discriminates against partisan voters of one party in favor of partisan voters of another party. The claim is one of gerrymandering, or design of representative districts for partisan advantage. Petitioners sum up their "essential position" as follows:

"Article 4 of the Michigan Constitution of 1963 contains a number of State standards. *Reynolds*[2] and its companion cases *nullified two of those standards* (80-20 and .7 per cent). *The remaning State standards survive* and are important to the people of Michigan. Although these standards survive, *Reynolds* imposes restrictions upon their application in order to give effect to the equal protection clause. The Federal and State equal protection clauses are, for purposes of this litigation, coequals.

"The requirements of these clauses are flexible, not rigid; and they do not require complete annihilation of the

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[1] Cf. Petitioners' original position with the summary of "essential position" quoted above.

[2] *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506).—REPORTER.

remaining State standards. Both can be given proper effect. Neither should extinguish the other. Accordingly, it is our position that the State standards should be applied to the greatest extent permitted by the equal protection clauses, as indicated in our briefs and in argument before this Court. This the Austin-Kleiner plan fails to do." (Petitioners' surrejoinder brief.) (Emphasis supplied.)

Predicated upon this "essential position" petitioners seek the following relief: (1) that the plan ordered adopted by this Court and pursuant to which the present legislature (house and senate) was elected in November 1964 be declared void for any future elections, and (2) that the plan be remanded to the apportionment commission "with a proper statement of standards to be followed in preparation of a revised plan," or, in the alternative (3) petitioners be permitted to present proofs that the apportionment commissioners and their helpers, advisers, and assistants had the intent to gerrymander legislative districts, and that this indeed was accomplished by the use of prior election results showing partisan distribution in various political subdivisions of the State.

I am unable to agree with any disposition of the petition which would declare the plan void and/or remand the plan to the apportionment commission or send the case to the Ingham circuit court for proof-taking.

It is well to reiterate what we are doing in this paragraph 8 proceeding.[3] Said paragraph reads in pertinent part as follows that "Upon the application of any elector * * * the Supreme Court, *in the exercise of original jurisdiction*, * * * *may* review any final plan adopted by the commission, and shall remand such plan to the commission for further action *if it fails to comply with the requirements of this Constitution.*" (Emphasis supplied.) Obviously, a remand is required only if the Court first finds that the plan previously adopted fails to comply with the requirements of "this Constitution," as that phrase may be interpreted.

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[3] Const 1963, art 4, §6, par. 8.—REPORTER.

Also quite obviously, we are not required to remand the plan to the commission for a determination *if* the plan measures up to constitutional requirements, nor for the purpose of determining if the commission can draw a better, nicer, or less controversial plan. Any remand must be predicated upon a finding that the plan fails to comply with constitutional requirements.

Two other preliminaries ought to be disposed of at the outset, too. One is that the plan ordered adopted by this Court must certainly bear the presumption of constitutionality. This is not only elemental law but also good common sense in this particular situation. This Court and the apportioning commission spent nearly the entire late winter and early spring of 1964 immersed in every conceivable kind of plan and proposal, preliminary to the order resulting in the present plan. Much of what is presently claimed by the petitioners was reviewed in simple substance before entry of the final order. If anything should bear a presumption of constitutionality, then it is the present plan.

The last preliminary item is that the burden of proof is on petitioners to show unconstitutionality. This, too, is elemental. In present context, it means that this petition must allege facts plainly showing that the plan is unconstitutional.

Assuming all well-pleaded facts to be true, for the purpose of this proceeding, I think the petition fails and should be dismissed. As before mentioned, the gist of petitioners' claim is that the plan was gerrymandered for partisan purposes. In this connection, petitioners say that, conceding *Reynolds v. Sims* wiped out the 80-20 and .7 per cent provisions of the apportionment formulae, certain "antigerrymandering" standards remain. It is these standards which petitioners claim the plan has ignored and which results in its invalidity.

The single most important question is that of severability and I think, therefore, that we should speak forthrightly about it; severability is, after all, a State question, not a Federal question. *Guinn v. United States,* 238 US 347

(35 S Ct 926, 59 L ed 1340). Reiterating, petitioners concede that the 80-20 provision of the senate formula and the .7 per cent (moiety) clause of the house formula do not survive *Reynolds*. "However," petitioners say, "Article 4 of the Michigan Constitution of 1963 contains other standards which petitioners contend are valid standards which do not deprive persons of equal protection of the laws. These standards are: (1) the adherence to county and other political subdivision boundary lines, (2) the division of counties into classes, (3) the use of the method of equal proportions, (4) the preservation of existing senate districts at the time of reapportionment, (5) requirements of compactness, contiguity, convenience, and uniformity of shape."

These "standards" are *not* severable from the 80-20 and .7 per cent provisions of the apportionment formulae for house and senate. This can be seen most clearly from reading the reasonably brief sections of article 4 of the Michigan Constitution of 1963, quoted fully in the margin of Justice SOURIS' opinion. One part of each formula complements the other; neither stands in isolation. Each was designed to be mandatory for area and population situations as applicable. The apportionment article of our Michigan Constitution thus had no discretionary features. And short of writing a new apportionment article by judicial interpretation, we are likewise in no position to say under what conditions the various standards may apply. It is not for the Court to say which standards must be obeyed and which may be ignored. Once the 80-20 and .7 per cent provisions have fallen, is this Court to make rules as to what remaining standards hold priority over others? Would the preservation of existing (prior to 1964) senate districts take precedence over contiguity? Absent 80-20 and .7 per cent provisions, can we make a true division of counties into classes? The answers are obvious and demonstrate in brief the interdependence and nonseverability of standards in the apportionment formulae. The results that could be anticipated from the "flexible" operation of such standards, for which petitioners contend, would be wholly foreign to the article 4 apportionment scheme as proposed by the

Constitutional Convention and adopted by the people. This, by analogy, is in plain violation of a basic canon of construction that where provisions found to be unconstitutional are of such key significance that to follow remaining provisions would operate to defeat the intent of the lawmakers, then the entire operative section must also fall. *Connolly v. Union Sewer Pipe Co.*, 184 US 540 (22 S Ct 431, 46 L ed 679), *People v. Sperry Hutchinson Co.*, 197 Mich 532. This in no way suggests that other portions of article 4 are not severable. The point is that only the apportionment schemes for house and senate are rendered invalid by *Reynolds v. Sims*.[4]

Once it is concluded that *Reynolds* excised entirely the apportionment formulae of article 4 because of the nonseverability of interdependent provisions, we have the question of the validity of the Austin-Kleiner alternate plan which was adopted by the commission on order of this Court. The question seems to be raised of whether proponents of the plan, and this Court, were too religious in following the mandate of *Reynolds v. Sims*. I should hope not. Surely everyone must agree that the central holding of *Reynolds* is that both houses of a legislature *must* (not may) be apportioned on a population basis with all districts to be of equal population, as nearly as practicable. Permissively, the several States *may* provide for some deviations from the principle by giving representation to various political subdivisions and may provide for compact districts of contiguous territory if substantial equality is maintained. But the problem of designing new apportionment criteria consonant with *Reynolds v. Sims* and companion cases, employing various standards in permissible deviation from the population principle, is neither the province of this Court nor of the apportionment commission. It is more properly within the province of the people, to be accomplished by appropriate amendments to the Michigan Constitution.

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[4] That is, section 2, except paragraph 1 thereof, and section 3, except paragraph 1 (and deleting the last sentence) and sections 4 and 5, all of article 4.

In the meantime, the strict mandate of *Reynolds* should be followed strictly. What the present plan does is to follow the unavoidable mandate of *Reynolds* by apportioning on the basis of population districts as nearly equal as practicable. The proponents of such plan have employed, and we have approved, certain equitable, common-sense standards, similar in some respects to certain of the "standards" in the apportionment formulae of article 4. We said in the adopting order:

"Subject to this controlling objective of substantially equal population, and to the extent it would not be subordidated, districts by such plan are formed as *compact, contiguous, and regular in shape, and do follow county, city, and township boundaries as nearly as practicable.*" *In re Apportionment of State Legislature—1964*, 373 Mich 250, 254. (Emphasis supplied.)

These equitable, common-sense standards of compactness, contiguity, regularity, and boundary-following are not provisions severed from the apportionment formulae, as I have said, but are the normal and reasonable standards which should be followed in any apportionment scheme, where possible. But that the proponents of the plan sought to follow these standards was fortuitous and not required by *Reynolds*.

I do not read *Reynolds* as requiring or mandating such standards, because in discussing similar standards, *Reynolds* uses the permissive "may," over and over again. It says that *States may* employ such standards. This is in contradistinction to the mandatory language employed in the essential holding of *Reynolds*:

"We hold that, as a basic constitutional standard, the equal protection clause requires that the seats in both houses of a bicameral State legislature *must* be apportioned on a population basis." *Reynolds v. Sims*, 377 US 533, 568. (Emphasis supplied.)

I think, therefore, that because the present plan follows the essential mandate of *Reynolds v. Sims* in making districts as nearly equal as practicable, it is in conformity with the requirements of the Constitution. It is valid and should

not be tinkered with. Depending upon one's point of view, a "better" plan can always be drawn, but this is little reason for again disturbing the geographical makeup of districts.

Petitioners say, however, that even if the standards are found to be nonseverable the plan is invalid because it is in violation of the due process and equal protection clauses of the Constitution. The first reason, they say, is that it "fragmentizes certain communities, thus denying fair and effective representation to the residents thereof." The trouble with this argument is that it has one standard for nonpopulous areas and another for the metropolitan areas. Examples given in support of the argument are from out-State areas; no mention is made of the absolute necessity of dividing up the city of Detroit and other large cities into several representative districts. I do not understand the argument that larger cities may be divided up but not smaller cities and other political subdivisions. I quite agree that, consonant with the principle of population representation, all existing boundaries should be maintained. This is precisely what we found the plan accomplished.

Gerrymandering is really the thrust of petitioners' claim. They are aggrieved that the districts, although as nearly equal as practicable, allegedly are designed to maximize the representation of members of one party and minimize those of the other major party. This has always been and will continue to be a serious issue, especially with loyal partisans. It is only minimally the question of which set of officeholders predominate, but to a considerable degree it involves the projection of principles from the party platform into the realities of the body politic. Obviously, this is an extraordinarily sensitive area for any court, for almost inescapably to rule in favor of one party's position is to rule against the other. No wonder there is a dearth of decisions in this precise category.

The only holding, as distinguished from *obiter dicta*, which we have been able to find is in the case of *WMCA, Inc. v. Lomenzo* (DC SD NY, 1965) 238 F Supp 916. In this case, plaintiffs tended to show that one of the plans adpoted by the legislature of the State of New York was in violation of the Fourteenth Amendment as being gerry-

mandered for partisan political advantage. A three-judge Federal district court held that the claimed gerrymandering did not render the New York apportionment plan in violation of the Fourteenth Amendment where the alleged gerrymandering was not based on race, color, or previous condition of servitude and did not produce districts of unequal population. In discussing the impact of *Reynolds v. Sims,* the court had this to say (p 626):*

"In short, *Reynolds v. Sims* concerned arithmetic and not geometry.

"Since plaintiffs have neither argued nor proved that the alleged political gerrymandering has produced districts of unequal populations, this suit does not come within the purview of *Reynolds v. Sims.* It is true that the opinion in that case treated partisan gerrymandering as an evil which a State may legitimately seek to preclude. *Id.* at 578, 579, 581 (84 S Ct 1362, 12 L ed 2d 537, 538). But *Fortson v. Dorsey,* 379 Mich 433, 439 (85 S Ct 501, 13 L ed 2d 405), makes it clear that the Supreme Court has refrained from condemning partisan gerrymandering as unconstitutional."**

Just recently, October 11, 1965, the United States Supreme Court affirmed the judgment without opinion. However, in a special concurrence, Mr. Justice Harlan had this to say:

"In *WMCA, Inc. v. Lomenzo,* 238 F Supp 916, the three-judge court found that plan A satisfied this order; in so doing it rejected contentions that apportioning on a basis of citizen population violates the Federal Constitution, and that partisan 'gerrymandering' may be subject to Federal constitutional attack under the Fourteenth Amendment. In affirming this decision, this Court necessarily affirms these two eminently correct principles." *WMCA, Inc. v. Lomenzo,* 382 US 4 (86 S Ct 24, 15 L ed 2d 2).

I doubt whether this represents the final chapter in rulings concerning partisan political gerrymandering, but

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* Sic. The quotation is taken from 238 F. Supp. at p. 926.

** Sic. The proper citation for *Fortson v. Dorsey* is 379 US 433.

the quoted case must certainly stand for the general proposition that in circumstances so far presented to the United States Supreme Court, it has not found that such gerrymandering has presented a reviewable Federal constitutional question. The dicta in *Reynolds* seems to indicate a disposition on the part of that Court to leave it to the States to develop and apply rational apportionment schemes which could make partisan gerrymandering difficult, for the Court observes in *Reynolds*, at page 578:

"A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. *Indiscriminate districting*, without any regard for political subdivision or natural or historical boundary lines, *may be little more than an open invitation to partisan gerrymandering.*" (Emphasis supplied.)

Partisan gerrymandering presently presents no Federal question, and it is clearly suggested that States are free to develop antigerrymandering standards. As I have already indicated, the development of such standards *in a rational apportionment scheme* is not the province of this Court.

Petitioners' due process argument must be rejected out of hand. It contends that this Court failed to follow fair procedures in ordering the plan adopted. They stress that only 5 days elapsed from the time of *Reynolds v. Sims* to a decision by this Court. Such argument patently ignores these facts:

1. The apportionment commission had under active consideration, many months before *Reynolds*, the first Austin-Kleiner plan which was based upon equal population for districts as was the second or alternate Austin-Kleiner plan which this Court ordered adopted.

2. Although the Michigan Constitution of 1963 does not provide for a hearing on the adoption of a plan, this Court allotted 2 full days (March 2 and 3, 1964) to the apportionment commissioners for the presentation of arguments on their respective plans. At this time, criteria for each plan was fully explored.

3. At the hearing, the Court was advised that in the event additional one-man, one-vote plans were desired for consideration by the Court, same could be supplied "in 24 hours."

The point of all this is that neither this Court nor the apportionment commission came into a consideration of the matter afresh. The fact is that the entire question had been under active consideration for several months. The order of June 22, 1964, directing the adoption of the second or alternate Austin-Kleiner plan was the culmination of many weeks of consideration. I have never heard that the commissioners complained of any "undue haste." I assume that they were as concerned about orderly processes as we were and hence comported themselves in a higly cooperative manner.

Finally, as to the order of June 22, 1964, I must disagree with those of my brothers who say that the order was provisional and adopted only for the primary and general election of 1964. My understanding of it, then as now, is that it was found to be the plan which most accurately complied with constitutional requirements, and for that reason was adopted, not just for the 1964 elections but until such time as it might be shown to be not in most accurate compliance. We anticipated that the plan might be challenged in paragraph 8 proceedings, but the language appearing in the opinion-order which stated that the plan "shall be placed in effect for the primary and general elections of 1964" was adequately explained in the predicate of the selfsame statement, to-wit, that such was being done "irrespective of whether or not said plan shall be challenged upon the application of any elector pursuant to the final paragraph of said section 6 of article 4." the final paragraph is paragraph 8. What we intended by that langage was to advise the people and the legislators that this Court had no intention of enjoining or otherwise interfering with orderly election processes, irrespective of whether a paragraph 8 proceeding might be commenced before the 1964 elections. This was a simple recognition of the fact that we had already passed the point of no return for that year, if we contemplated orderly election processes.

For the reasons given, I vote to dismiss the petition. I would award no costs.

T. M. KAVANAGH, C. J., concurred with SMITH, J.

November 2, 1965.

Upon due consideration of the respectively submitted opinions of the Justices, dealing as same do with the validity as well as present interpretation and applicability of section 6 of article 4 of the Constitution of 1963:

ORDERED, pursuant to the specific mandate which appears in paragraph 8 of said section 6 ("shall direct the secretary of state or the commission to perform their duties"), that the commission on legislative apportionment proceed anew with such work and deliberations as will enable the commission to district and apportion the senate and house of representatives according to now ascertainable as well as applicable requirements of the Federal Constitution and of the Michigan Constitution.

ORDERED FURTHER:

1. That the commission complete the work thus required of it within 60 days from and after the date of this order.

2. In event of another deadlock of the commission, continuing through expiration of such 60-day period, that the secretary of the commission report promptly to this Court with petition for entry of such further mandatory order as the Court may, at the time, choose to enter pursuant to its broad powers as on mandamus to a State officer.

3. That the Court retain jurisdiction over and with respect to the present proceeding until the requirements of paragraph 8 of said section 6 have been completely fulfilled, including review by this Court, if then necessary, of any final plan which the commission may adopt, and including retention of power to remand any such plan to the commission for further action if, upon final hearing aided by such depositions as may be taken pursuant to future order or

orders, it is determined by the Court that such final plan fails to comply with all controlling constitutional requirements.

JOHN R. DETHMERS
HARRY F. KELLY
EUGENE F. BLACK
MICHAEL D. O'HARA

I concur with all of the above order except numbered paragraph 3 with which I do not agree.

PAUL L. ADAMS

Chief Justice KAVANAGH and Justices SOURIS and SMITH dissent from entry of the foregoing order, not alone because of the views expressed in the opinions herein each signed, but in addition for the reason that the majority's order requires the commission to devise a plan of reapportionment of legislative power in accordance with standards not defined in any one of the four opinions signed by the aforesaid majority of five Justices of the Court.

THOMAS M. KAVANAGH
THEODORE SOURIS
OTIS M. SMITH

SUPPLEMENTAL OPINION (filed November 21, 1965).

BLACK, J. Since our opinions released November 2d have been viewed publicly by some members of the constitutional commission as having failed to provide expected "guidelines," I deem it in order that this addendum be filed and distributed immediately to members of the commission and to all presently involved counsel.

The guidelines, said to be lacking, were promulgated by supreme authority when the apportionment decisions of

1964 were handed down (June 15, 1964; *Reynolds v. Sims* through *Lucas v. Forty Fourth General Assembly of Colorado,* 377 US 533-765 [84 S Ct 1362-1489, 12 L ed 2d 506-652]). Justice ADAMS reviewed these guidelines with due accuracy in his opinion filed November 2d. Had it not been for disagreement of interpretation with respect to one part of paragraph 8 of section 6, one of us believing that the Court as yet has no "final plan" before it to "remand," (376 Mich 442 *et seq.*) and the other concluding "that this matter should be remanded," (376 Mich 454) I could and would have indorsed Justice ADAMS' said opinion.

To make sure that members of the commission understand that at least two members of the Court are in agreement that the mentioned apportionment decisions provide all guidelines needed by the commission, I now record unconditional indorsement of all portions of Justice ADAMS' said opinion, save only the first and final sentences thereof. It is imperative, in my view, that we remember at all times that "remand" under paragraph 8 is due and proper only when the commission has, by its own independent action, adopted a "final plan," that such plan has been brought before the Court in pursuance of original proceedings, and that the plan has been found by the Court as failing to comply with constitutional requirements.

This last was made explicit by paragraph "3" of the order which, shortly after release of our opinions on November 2d, was signed by Justices DETHMERS, KELLY, O'HARA and the writer.

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APPENDIX B

OPINIONS OF THE MICHIGAN SUPREME COURT

March, 1966, 377 Mich. 396, 140 N.W. 2d 436

MEMORANDUM OF JUSTICE BLACK (*for issuance of immediate mandatory writ; submitted to other members of the Court January* 17, 1966).

"We have a great problem here maintaining our credibility with our own people."[1]

As this constitutionally ordained original proceeding draws to an ignominious close, the Supreme Court of Michigan also has a great problem maintaining its credibility with its own people. We have issued a mandatory order to the commission on legislative apportionment, the purposeful integrity of which five of us have attested "pursuant to the specific mandate which appears in paragraph 8 of said section 6"[2] (376 Mich at 481). The time allowed for performance has expired, and the commission has refused to comply. Now, without plausible explanation or excuse, the Court will not set in motion any one of the several means of enforcement to which it may and should exigibly turn.[3] In blunt short, the Court will not execute a pivotal

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[1] Ambassador Goldberg; quoted by James Reston in the Detroit Free Press January 8, 1966.

[2] Const 1963, art 4, §6.—REPORTER.

[3] One, the most immediately effective means of persuading the commission to terminate its deadlock, was written into our record November 2 (376 Mich at 445, 446). And if that method is too strong for those who cannot stand the sight of political blood, another to which the Court might turn would be an order of contempt bearing an accumulatory daily fine of each commissioner until the commission arrives at a "final decision" under paragraph 5 (of said section 6).

The daily fine would have to be high in amount of course. The stakes of action versus inaction under said section 6 are coveted politically. The monetary value thereof is dear unto priceless.

assignment of the Constitution; the paragraph 8 assignment to assure the people that the commission "performs" its paragraph 5 duty.[4]

Since an ultimate negative end of the captioned proceeding is directly ahead, and since the proceeding is of such public nature as to render it beyond settlement or compromise, I have concluded that the fact should be announced now, the better to relieve such uncertainty as may yet remain in the minds of governmentally concerned citizens. No agony, even of political nature, should be prolonged unnecessarily. Today's divisively fragmented circumstances reviewed, it is in order that the legislature be told immediately that it may get on with its critically requisite task of legislation; that there need be no further suspensory concern for affirmative judicial action; that the commission has demitted and the Court will do nothing about it.[5]

This appeal to our original jurisdiction is dead. All is over except the bandying of words about and around another fervent plea for deliverance of the Court by constitutional amendment (see Justice SOURIS, 376 Mich at 466-469). The Court should say so, now in January, rather than dally along with dissentient obliques only to belatedly admit the fact next spring. All protestations, denials and sidewinded delaying actions to the contrary notwithstanding, the Court for want of a majority vote will not enforce its order of November 2d. Without judicial enforcement

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[4] Const 1963, art 4, §6.—REPORTER.

[5] If this timid "writ of arousal" should galvanize the Court into timely pursuit of what section 6 calls for judicially, I shall promptly write into our record an *amende honorable*. Predictably, though, no crow will be set at my place on our conference table. The bird must be brought down first—quick too—and I see no quaternity of marksmen here.

The prerogative "writ of arousal" was invented by Justice KELLY. See Former Justice TALBOT SMITH in 51 ABAJ at 1053.

section 6 is lifeless. That part of article 4, upon which the whole article was designed to pivot now and decennially hereafter, is backbone paralyzed. Some day prior to the 1966 cutoff date we knew in 1964 (373 Mich at 253), the Court will deliver its *beau geste* to the presently districted legislature. It will descend ambagiously from the third to the second floor of the Capitol in the form of an exalted beatitude, *beati possidentes* (blessed are those who possess).

Woven through every word so far written *in re* this appeal to our original jurisdiction is the little matter known as the truth that must be served. It is that our order of November 2d *can* be enforced by the Court, provided the Court has the will to enforce it. To say upon authority of section 6 that the Supreme Court of Michigan, "in the exercise of original jurisdiction," may—no "shall"—direct the commission to perform its duties (that we have done; 376 Mich at 481, 482), and then to say or imply that the Court cannot enforce its writ, is to deny what is inherent as well as statutorily provided.[6] Significant too is the fact that no member of this Court is willing to stand up, on the record, with averment either that section 6 is invalid or that the people, by that section, *have written into their Constitution a mandate no branch of the State governmen can enforce.* The only exception is Justice SOURIS (see 372 Mich at 461-469; 373 Mich at 257-262; 376 Mich at 458). He says section 6 is unconstitutional; not that the Court is powerless to enforce it.

I stand apart from such judicial delinquency. The Court fails to attend the Constitution with that resolution which, to the people of Michigan, has been due since the first Monday of 1966. Its failure is sure to rise and haunt the Court again in 1971, when the decennial census of 1970 is

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[6] "Sec. 219. The Supreme Court has a general superintending control over all inferior courts and tribunals. The Supreme Court has authority to issue any writs, directives, and mandates that it judges necessary and expedient to effectuate its determinations, and to take any action it deems proper to facilitate the proper administration of justice." (CLS 1961, §600.219 [Stat Ann 1962 Rev §27A.219]).

recorded and the duties of a newly appointed commission and of the Court are called into play anew under section 6.

The only way to avoid such recurrence is by an intervening amendment of the Constitution. But even that avenue of retreat from duty may not be open. When the question of 10-year party control of the legislative branch is at stake in the critical wording of a constitutional clause to be proposed, the internecive fury of the drafting committee or committees is more than likely to result in another political deadlock, with all participants on the floor. And if by some chance the drafters should come up with what they might agree to submit for consideration of the electorate, will enough electors approve it, realizing as all will from these telltale experiences of 1965-1966 that there will be *no way to insure the enforcement of what they are asked to indorse?*

TO CONCLUDE:

1. The provisions of section 6 are judicially enforcible. *There is no person, court, tribunal, or branch of government to which this Court may pass the politically heated buck.* Something more than power is cast upon this Court by the final paragraph of section 6, conjoined as that section is with the first section of article 6 and the oath each seated Justice has subscribed with uplifted hand.[7] There is the honor of duty, prefaced by that verb "shall." It is aimed at the very navel of the Court by that final paragraph of section 6.

2. Current criticism of section 6, spawned of this second deadlock of the commission, is aimed at the wrong target. The fault lies not with the section but with the judicial branch. Section 6 was a well thought out procedural solution of what is probably the most difficult of all problems of organization of State legislative assemblies. So far as

[7] See Const 1908, art 16, §2; Const 1963, art 11, §1.—REPORTER.

I can discover,[8] it is the only constitutionally provided means extant for districting and apportionment of a State legislature under explicitly directed judicial supervision. But again, as is ever the case where enforcement of a constitutional mandate is required, the mandate is no stronger than the agency assigned to its enforcement. The human element is ever the weak link. That is why, on sad occasion, that

> "The best laid schemes o'mice and men
> Gang aft a-gley,
>
> An' lea'e us nought but grief and pain,
> For promis'd joy."[9]

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[8] The nearest to section 6 constitutional procedure so far effected was approved last Friday (January 14, 1966) by the electors of Missouri. Sections 2 and 3 of the Missouri amendment deal with apportionment of the house of representatives. Sections 5 and 7 of the amendment deal with apportionment of the senate. Excepting for interchangeable reference to the "senate," "senators" and "senatorial districts," the relevant provisions of sections 5 and 7 duplicate in full substance the following portions of said sections 2 and 3;

After the statement [final apportionment statement with required map, approved by the commission] is filed members of the house of representatives shall be elected according to such districts until a reapportionment is made as herein provided, except that if the statement is not filed within 6 months of the time fixed for the apportionment of the commission, it shall stand discharged and the house of representatives shall be apportioned by the commissioners of the State supreme court, a majority of whom shall sign and file its apportionment plan and map with the secretary of State within 90 days of the date of the discharge of the apportionment commission. Thereafter members of the house of representatives shall be elected according to such districts until a reapportionment is made as herein provided. * * *

"In the event the commissioners of the State supreme court are charged with the apportionment of the house of representatives, they shall file their plan of apportionment and map with the secretary of State within 15 days of the discharge of the commission."

Now what will the Missouri supreme court do should the six commissioners of that court arrive at a deadlock. Follow our inaction as precedent? Come now, Brothers.

[9] Robert Burns, "To a Mouse," stanza 7.

3. As the Court, by inaction, releases this particular commission from duty forever, some citizens surely (the writer being one) will find themselves giving a wry salute to the four Democratic divinators of the commission. The prescience that foursome has shown is wonderously uncommon. How the four could have been so confident, in those waning days of December, that five members of the Supreme Court of Michigan would not enforce what the five ordered the commission to do, back in early November, can be attributed only to occult power; a power given to few mortals. These gentlemen, by standing firm for the *status quo* through every painful hour of that 60-day period, predictably have saved the presently districted legislature, probably for all currently foreseeable time. Their spiritual (not political of course) rewards should be of high order.

Our mandatory writ should issue forthwith, requiring that the secretary of the commission proceed promptly[10] to insert, say in a jury box borrowed from a nearby circuit court, eight uniformly folded white slips of paper bearing respectively the names of the eight members of the commission; that he then close the box and shake it up as county clerks are wont to do upon jury selection; that he then, with discreetly averted gaze, draw out seven of the slips one after the other, and that he announce after each withdrawal the name appearing on the withdrawn slip.

A separate and simultaneously issued writ should direct that the first seven members of the commission, identified thus by the seven withdrawn slips, shall "proceed to district and apportion the senate and house of representatives" within an allotted number of days, say 30, and should provide for prompt review of the action of the seven commissioners upon petition filed in the present proceeding by any elector; all in pursuance of paragraph 8 of said section 6 and paragraph 2 of our said order of November 2.

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[10] After due publication and certainly in a public place.

No one need despair, or flee to the hills should such an order issue. Whatever the result of any such 7-man commission action, that result would be subject to constitutional test pursuant to said paragraph 8. And even though such mandated procedure might, the time element again being critical, leave the Austin-Kleiner plan intact for the elections of 1966, this Court would be able to say that it had performed manfully the duty said paragraph 8 has imposed upon it. "Drest" only as we are "in a little brief authority,[11] it might even be said of us some day that such was *our* finest hour.

SUPPLEMENT (February 1, 1966):

In the great journal of things happening since section 6 was first invoked in this Court (February 4, 1964; 372 Mich 418) we find that our paragraph 8 time-account is running out. It is fitting that the journal not be closed and put away until all of the other members of the Court have doffed hats to Justice Souris. Even though he received no support November 2d last, our Brother has succeeded veritably in achieving the aim of that motion to "adjourn further proceedings in this matter until February 15, 1966, or until the further order of this Court" (376 Mich at 469); a motion he has followed today by a-motion to dismiss this constitutional proceeding. It is perfectly clear, now that February has arrived, with no open or preparatory judicial action in the meantime,[12] that the Court and the commis-

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[11] Shakespeare, "Measure for Measure", act 2, scene 2.

[12] See paragraph "2" of our order of November 2, 1965 (376 Mich at 482). In accordance with that paragraph the secretary of the commission advised the Court, on January 4, 1966, that the commission "was deadlocked and unable to agree upon a plan for the apportionment of the Michigan legislature." His report concluded with a prayer for entry of a "further mandatory order in this cause."

On January 12, 1966, the Court met for the purpose of considering what to do" about the commission's intransigeance. Since then the Justices have engaged busily upon the business of writing opinions

(Continued on next page)

sion have left but a scant 4 months within which to complete, *with finality*, what section 6 calls for. That isn't enough, further delays being expectable. Justice SOUBIS' said motion to adjourn, even though denied at the time, has flowered into subtile—not subtle—effectiveness. The Austin-Kleiner plan, which this Court made effective for the 1964 legislative elections only, never a "final plan" within said section 6, is assured full effectiveness for the 1966 legislative elections.

Courts many times, by the negation of advertent or inadvertent procrastination, accomplish affirmative results. It is so here. Even though there should be an immediate change of majority heart, it is predictably impossible to fulfill all of the requirements of paragraph 8 prior to the June deadline. (March 8, 1966):

Now that the foregoing memorandum has roused other members of the Court into written-for-the-record contribution of their respective views and decisions two things stand forth. The first is that Justice SOUBIS, departing from his previously steadfast declaration that section 6 is *unconstitutional* (372 Mich at 461-469; 373 Mich 257-262; 376 Mich at 458-469), has joined three other members of this eight-man Court in the *final* selection, under paragraph 7 of that same allegedly unconstitutional section 6, of the Democratic (Austin-Kleiner) plan. The second is that the now united four (Justices SOUBIS, T. M. KAVANAGH,

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(Continued from preceding page)

for a variety of tort, zoning, workmen's compensation, contract, contempt, public service, malpractice, and like matters of less pressing concern. But nary a written or spoken word about this time-emergent proceeding, affecting as it does the very future of the government of Michigan, has since been scrawled or communicated to other members of the Court. The only exception is the foregoing memorandum of January 17, 1966 and now today's motion—by Justice SOUBIS—to throw this constitutional proceeding right out of Cour. "Adjourn it first, and then dismiss it later." There is the explanato key to this whole sordid business.

SMITH, and ADAMS) stand for final dismissal of this paragraph 8 original proceeding.[13]

This quaternary joinder is of course presently decisive. By deadlock here the deadlocked commission on legislative apportionment is no more. Nonetheless, being philosophic by nature, I am moved to say that what has thus come to pass is better than more judicial stalling. It amounts at least to a "decision" by impasse.

Ever since this paragraph 8 original proceeding was submitted last May the Court has dallied over a "decision" just about anyone, having a near or distant connection

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[13] A less timid and less respectful judge than the undersigned described a similar denouement in *State, ex rel Lashly v. Becker*, 290 Mo 560, 625 (235 SW 1017, 1041, 1043); another closely divisive apportionment case. Here are his words of summary:

"Shackled as we are with partisan bias and prejudice, it is humiliating to confess that even judges in our highest courts are unable to divorce law and politics. In emergencies, great and small, they have heard the Macedonian cry, and have not been disobedient to the call.

"What avails a constitution if it can be stricken down by mere inference and, as many believe, in the interests of partisan politics? Such a conclusion should be announced only when good and substantial reasons can be given therefor that will appeal to the common sense and understanding of our people. Mere sophistry and attenuated theories will not serve the purpose nor save us from reproach."

I cannot go that far, goodness, mercy, charity, and credulity being dominant in Michigan; whereas servient in Missouri. As before, "it must be said again that the Supreme Court of Michigan is loftily separated from partisan politics." (376 Mich at 448.) What the Justices write now, distinguished from past writings and indorsements of writings, they sincerely believe. They have thought this all out in what Justice Cardozo described as the "realm of pure reason." The contexture (Nature of the Judicial Process, p 168):

"I do not doubt the grandeur of the conception which lifts them [judges] into the realm of pure reason, above and beyond the sweep of perturbing and deflecting forces. None the less, if there is anything of reality in my analysis of the judicial process, they do not stand aloof on these chill and distant heights and we shall not help the cause of truth by acting and speaking as if they do."

with the Capitol's moccasin telegraph, could have predicted. Turning away from its paragraph 8 duty to see that the commission performs its duty; that of adopting a "final plan" of districting and apportionment; the Court itself—by stalemate—has proceeded "to district and apportion the senate and house of representatives," thus effecting its own "final plan."

From all this I expressly abstain. My reasons appear in the 376th Michigan report at 440-451.[14] This is not a paragraph 7 proceeding. If it were, then (this is for future reference only) my vote would be cast with Justice DETHMERS in support of plan No. 5. When my unreserving support of the words that follow immediately was recorded last November 21st (376 Mich 483), I meant every bit of that support. The words, written by Justice ADAMS (376 Mich at 457):

"Though the Federal standards are overriding and must be followed, I see no reason why the standards and provisions in our own State Constitution should not also be applied if it is possible to do so. I do not regard the failure of the 80-20 formula as having destroyed these standards. The commission should apply them, if at all possible, always remembering that the United States Supreme Court said:

"'We hold that, as a basic constitutional standard the equal protection clause requires that the seats in both houses of a bicameral State legislature must be apportioned on a population basis.' *Reynolds v. Sims, supra,* 568."

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[14] I hold (a) that it is the constitutionally *exclusive* duty of the commission on legislative apportionment to district and apportion the senate and house of representatives; (b) that that duty cannot under said paragraph 8 or otherwise, be taken over by this Court without violating the plain directions which appear in said section 6 of article 4; (c) that the commission on legislative apportionment has not as yet performed its duty for the entire remainder of the present decennial period, and (d) that it is our peremptory responsibility under said paragraph 8 to instruct the commission as follows: (376 Mich at 444.)

When the Austin-Kleiner plan and said plan No. 5 are arrayed together for paragraph 7 choice ("which plan complies most accurately with the constitutional requirements"), there is no contest. Austin-Kleiner by express admission of Justice SOURIS (*post* at p 433) discloses a serious defect; a defect the Justice would cure by judicial fiat. Plan No. 5, on the other hand, preserves what sections 2 and 3 of article 4, of the Constitution of 1963, call for consistently with our own equality clause (article 1, §1) as well as the equality clause of the Fourteenth Amendment.

True, neither of the two plans is constitutionally perfect. No plan has to be when a paragraph 7 choice is in order. The reason is that next ensuing paragraph 8 stands ready to correct, by "review" if called upon, any "final plan" the commission adopts pursuant to paragraph 5 of said section 6. Did not the delegates, and in turn the people, put paragraph 8 *after* paragraph 7, in said section 6, for that very *final* purpose?

DETHMERS, J. (*for remand to the commission*). On May 26, 1964, Justices SMITH and ADAMS joined Justices KELLY, O'HARA, and me in approving the Hanna-Huhtala-LaPorte-Brucker plan of apportionment as complying most accurately with article 4 of the Michigan Constituion of 1963. *In re Apportionment of Legislature—1964*, 372 Mich 418, 480, 482. This involved disapproval of the Austin-Kleiner plan, then also before this Court, for lack of such accurate compliance. Pursuant thereto an order of this Court issued that same day directing the adoption of the Hanna-Huhtala plan by the apportionment commission. Thereafter, the Supreme Court of the United States spoke in *Reynolds v. Sims*, 377 US 533 (54 S Ct 1362, 12 L ed 2d 506), requiring apportionment of both houses of State legislatures to be on a population basis with districts as nearly of equal population as is *practicable*. There followed two orders of a majority of this Court on June 17, 1964, the first vacating the May 26th order, and the second, a companion order, directing the commission to reconsider the apportionment

matter in the light of the decision in *Reynolds. In re Apportionment of State Legislature—1964*, 373 Mich 247. Next upon the commission reporting its continued inability to get a majority in agreement on a plan and its members submitting plans, including again the Austin-Kleiner plan, four members of this Court on June 22, 1964, filed an opinion finding that the selfsame Austin-Kleiner plan most nearly complied with the Federal constitutional requirement announced in *Reynolds. In re Apportionment of State Legislature—1964*, 373 Mich 250. In that opinion it is said concerning the Austin-Kleiner plan that (pp 253, 254):

"By such plan districts in both the senate and house of representatives are composed of territory containing population as equal as the 1960 Federal decennial census permits. Subject to this controlling objective of substantially equal population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous, and regular in shape, and do follow county, city and township boundaries as nearly as practicable."

This opinion was signed by four Justices—T. M. KAVANAGH, Chief Justice, and Justices BLACK, SMITH, and ADAMS. It directed that the commission adopt the Austin-Kleiner plan and that it be placed in effect for the 1964 elections. Justices O'HARA and SOURIS concurred in the result, apparently basing their concurrences solely on Federal grounds.

All of the above ostensibly occurred under the provisions of the seventh paragraph of article 4, §6, Michigan Constitution of 1963, the commission having reported an inability to agree and individual members or groups of members having submitted different plans to the Court. The last noted order of this Court was complied with by the commission and thus was the Austin-Kleiner plan adopted and published.

There followed the filing of the petition in this case by electors, under the eighth paragraph of section 6, article 4, seeking review by this Court of the adopted Austin-Kleiner plan.

On November 2, 1965, a majority of this Court, in this cause, ordered the commission to proceed anew with consideration of plans to enable it to apportion according to requirements of the Federal and State Constitutions and this Court retained jurisdiction. (376 Mich 481.) A majority previously (June 22, 1964) having held that Austin-Kleiner most nearly complies with the population equality requirement of the Federal Constitution, this Court's majority action of November 2, 1965, is indicative of that plan's considered shortcomings insofar as compliance with requirements of the State Constitution is concerned.

Query well, whether this return to the commission is to be considered as placing the proceeding back in paragraph 7 or in paragraph 8 status. At all events, the commission again failed to reach majority agreement and, upon their report, back comes Austin-Kleiner urged upon the Court by the Democratic commissioners and a so-called house and senate plan No. 5 by the Republican commissioners. Whether, under either express or inherent retention of jurisdiction in the November 2, 1965, direction of the matter anew to the commission, this is still in the posture of a paragraph 7 matter with no commission majority in agreement, thus calling for determination by this Court of which plan submitted by members of the commission most accurately complies with constitutional requirements, or has now matured into paragraph 8 stature in which this Court shall direct performance of duties by the commission and secretary of State, review the adopted plan and shall remand to the commission if the plan *"fails to comply with the requirements of this Constitution"*, the practical result is the same. We review the Austin-Kleiner plan. Then we may, as under paragraph 7, determine whether the Austin-Kleiner or No 5 or any other plan submitted by members of the commission most accurately complies, or, as under paragraph 8, determine whether adopted Austin-Kleiner fails to comply and, if so, remand it to the commission for further action. In doing the latter, me thinks it would be permissible, indeed requisite, for the Court to at least whisper in not too inaudible tones, that plan No 5 or some

other submitted by a commissioner more accurately complies. For all practical purposes, then, we are on familiar ground.

At this juncture, I should interject that I consider one or the other of the last two above courses to constitute the sum total of our powers in the premises. I do not subscribe to the idea of inherent equitable powers in the Court to apportion legislative powers. Such was never the concept in English or American law. Our powers in the matter must derive from the Constitution. It expressly provides in article 4 for powers of apportionment, the manner of their exercise and by whom. The Court is not therein designated as an apportioner. Neither do powers vested in the Court elsewhere in the Constitution include such power. I reject the idea that we have power in the matter to order a plan of apportionment of our own devising or to choose from sources other than plans the commission or some one or more of its members officially submit to this Court under article 4. There is imposed upon us, then, the heretofore mentioned function and task to review and make determination with respect to a plan or plans emanating from members of the commission.

Some of the members of this Court holding the 80-20 formula and the .7% formula specified in article 4 for apportioning the Senate and House, respectively, unconstitutional as violative of the Federal Constitution's Fourteenth Amendment equal protection clause, have written that other standards for apportionment set forth in section 6 of article 4 are not severable from the mentioned formulae provisions and, therefore, cannot survive the holding of the latter's invalidity. From this it is argued that there are, then, no valid State constitutional standards against which to judge Austin-Kleiner's validity. This nonseverablility contention I do not accept. Mr. Justice BLACK, in his opinion of November 2, 1965, reported in 376 Michigan at page 440 *et seq.*, has expressed his reasons for rejecting such claim. I agree therewith. It seems to me that it is completely possible for some or all of the other standards or

requirements of article 4, §6, to stand and be made effective even though the formulae be eliminated from the determination of apportionment. If the Federal Constitution's Fourteenth Amendment equal protection clause, as says the United States Supreme Court in *Reynolds,* requires population equality between districts as nearly as practicable, and if this bars the intent of a majority of Michigan voters, in adopting the Constitution, to cause area and geographical considerations to temper or dilute population standards by use of the formulae, does it follow that the people, because frustrated in that formulae attempt, would peevishly refuse anything less and that, thus, they would reject or scorn any of the other standards, already adopted by them, that tend to give some meaning to area or geographic considerations in the final, net total apportionment solution? To pose this question makes manifest the ridiculous character of such a suggestion. Those standards survive *Reynolds.* The nonseverability theory ought not to be permitted to be a barrier to determination of the problem before us of whether Austin-Kleiner meets State constitutional requirements or which plan, if any, most accurately does.

As previously noted, the finding, if such it may be called, of a majority of this Court on June 22, 1964, with respect to Austin-Kleiner was that it complied most nearly with the Federal Constitution's Fourteenth Amendment requirement as to population. None said that it was the plan which complied most accurately with article 4, §6, Michigan Constitution of 1963 requirements which continue to exist aside from the formulae. While, as above noted, the four-Justice opinion of June 22, 1964, did comment that the Austin-Kleiner plan formed districts as "compact, contiguous, and regular in shape, and do follow county, city, and township boundaries as nearly as practicable," it is to be observed that this statement is prefaced by the expression which reveals that it is premised on the consideration that the plan's controlling objective is that of attaining districts "containing population as equal as the 1960 Federal decennial census permits." Thus, any comfort for the

suggestion that the finding is made in that opinion that Austin-Kleiner complies most accurately with the Michigan Constitution is based on the false premise that the Federal Constitution and *Reynolds* require apportionment into districts containing population as equal as the census permits. *Reynolds* does not go to such extremes, but provides only that the districts shall be as nearly of equal population as is *practicable*. So read and understood, it is clear enough that no majority or portion of this Court has held that Austin-Kleiner complies most accurately with article 4 of the Michigan Constitution. As also previously noted, on May 26, 1964, a majority of this Court, still members of this Court, held that Austin-Kleiner was not the plan which so complied. Nothing has since been written by any of them, or any other Justice of this Court, to demonstrate that Austin-Kleiner did, after all, most accurately comply. Instead, it is written that the plan, Austin-Kleiner, adopted on order of this Court, must bear the presumption of constitutionality, that petitioners in this proceeding bear the burden of establishing the unconstitutionality of the adopted Austin-Kleiner plan, that they have not borne it and, in fact, have not even pleaded facts to prove it, and hence the proceedings should be dismissed for such failures by petitioners. This completely misconceives the nature of this proceeding and the function and duty laid upon this Court by article 4 of the Michigan Constitution. If adoption of a plan by the commission, either of itself or under order of this Court, gives the plan the benefit of such presumption and a burden of proof rests on petitioners, there would be scant purpose for providing, as does paragraph 8, for review upon petition of any elector and for Court determination of whether the plan fails to comply. The purpose was and manifestly is to secure apportionment in compliance with the Constitution, not to provide for a match of wits and skills in an adversary proceeding. The duty of the Court is not satisfied nor discharged by a mere determination of the adequacy of petitioners' pleadings, nor the sufficiency of their proofs (which it is said are insufficient, in the face of a majority of this Court's constant denial of their petition for discovery to help develop such proofs),

but, on the contrary, the duty of this Court is to make a finding as to constitutional compliance and, if found that the plan fails in that respect, to remand it. The test is not the character, quality, and skill of petitioners and their efforts, but, rather, of the plan itself. That is the question for our answer and should meet with no avoidance on the basis of technicalities or otherwise. Does Austin-Kleiner meet the permissible, surviving requirements of article 4?

The word of a majority of this Court, expressed in official opinions, as above observed, was that Austin-Kleiner did not so comply. What has since been shown or discovered to the contrary? Nothing to that effect has been called to our attention. The briefs and statements submitted to this Court in this matter by those commissioners who are proponents of Austin-Kleiner display such a surprising knowledge of and avid interest in figures which they allege represent the relative number of Republican and Democratic senators and representatives who will be elected to the State legislature, on the basis of the vote cast for State treasurer in 1962, under the different plans, as to weaken considerably their vehement protestations of having given no regard thereto in devising Austin-Kleiner. A look at the plan does as much. To what a majority of this Court once announced on the point, I continue to give adherence. Austin-Kleiner is excessively violative of the permissible, surviving requirements of article 4, §6, in the respects heretofore mentioned in opinions of members of this Court, such as that of this writer appearing at 373 Mich 256 in which, in comparing Austin-Kleiner to another plan, Austin-Kleiner was found deficient with regard to the requirements "of creating districts of regularity in shape, following, to the maximum extent possible, county, city and township lines, with due regard for the integrity of the boundaries thereof." Examination of the Austin-Kleiner plan, with tables, maps, and supporting materials will disclose the extent of the failure of compliance. We find Austin-Kleiner to be invalid and unconstitutional.

The materials in the files relating to house and senate plans No 5, as amended with respect to senate district No

36,* disclose a greater compliance with the surviving standards of article 4, §6: It is the plan which complies most accurately with those constitutional requirements.

It is pointed out by the commissioners who are the Austin-Kleiner proponents that it presents districts more nearly of equal population than do plans No 5. Attention must again be directed to the fact that *Reynolds* does not require absolute numerical equality, nor would this be possible, but, rather, "as nearly of equal population as is practicable." How much variance is permissible? In house plan No 5 the largest district populationwise numbers 73,866, the smallest 68,246. In senate plan No 5 the largest is 216,118, the smallest 199,528. This compares with Austin-Kleiner as follows: senate, largest 207,094, smallest 205,064; house, largest 72,000, smallest 69,118. These population differences, in either plan, between the largest and smallest districts, with the rest running about halfway between, are hardly the kind of stuff from which political power and influence and deprivation of equal protection of the laws are made. Obviously, no exact formula of permissive variance can be expected. The object in *Reynolds* and the others seems to have been to prevent control by minorities. Such slight differences as here discussed are not of significance in that regard. The *Reynolds* provision for equality of population as nearly "as is practicable" seems to call for use of common sense. If the majority of the Michigan electors voting on adoption of a Constitution in 1963 decided that they desired the meager checks and balances inherent in some consideration of area and geographic factors in apportionment of legislative powers, I do not believe that *Reynolds* requires total disregard of those wishes of the electors as expressed in the State Constitution itself merely for the sake of avoiding such slight population differences between districts as contained in plans No 5. Common sense and the object sought by the United States Supreme Court to be attained, do not so require.

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* The amendment and changes in senate plan No. 5 relating to senate district No. 36 were proposed by petitioners herein, as suggested by intervenors, and thereafter adopted by the Republican commissioners.

In my view, house and senate plans No 5, as amended, most accurately comply with the permissible surviving standards and requirements of article 4, §6, Michigan Constitution of 1963, and with that permissible object in mind, their districts are as nearly as practicable of equal population for the purposes sought to be subserved in *Reynolds*.

An order should enter declaring the Austin-Kleiner plan unconstitutional and remanding it to the commission for further action consistent herewith.

KELLY, J. *(for remand to the commission)*. I am in complete agreement and accord with Justice DETHMERS' opinion. I write to add to the thought he properly described as a "constant denial of their petition for discovery," and oppose and disagree with the following three conclusions of Justice ADAMS that (1) "petitioners' allegations are insufficient to state a legal claim of gerrymandering"; (2) "petitioners have failed to demonstrate that discovery would be appropriate to this case"; and (3) "the motivations, cogitations, and machinations of the commissioners, even if discoverable, would not be relevant," and Justice SOURIS' conclusion that he does "not regard petitioners' allegations legally sufficient to state a claim upon which judicial inquiry can be made."

Thirty-four distinguished Michigan citizens petitioned this Court on August 22, 1964, to rescind our June 22, 1964, approval of the Austin-Kleiner plan and allow them to prove to this Court that:

"Austin and Kleiner and others who actually participated in the drawing of the Austin-Kleiner plan obtained and utilized extensive data and records of past voting results in each precinct, city, township, and county, specifically including the results of the 1962 State treasurer election, which data and records were compiled and tabulated by and with the support of the Democratic party and the International Union, UAW. The purpose of utilizing such data and records by Austin, Kleiner and their aides, was creation of an apportionment plan most favorable to the Democratic party and its candidates.

"Different variations of a plan with districts of equal population were drawn from time to time in the course of preparing the Austin-Kleiner plan, each of which was tested by application of such data and past voting records, and such plan was successively revised and redrawn in attempts to maximize Democratic party voting strength, or to minimize Republican party voting strength.

"The draftsmen of the plan, after its adoption, openly boasted of their success in achieving their objectives and also stated openly that they intended the plan as 'a negotiating document' and had not expected to be able to get it adopted in its original form.

"The plan accomplishes such gerrymandering by apportioning the districts without any regard for political subdivision or natural or historical boundary lines, and by constructing unnaturally-shaped districts in order to join geographically separated concentrations of voters of one or the other party, or to split up certain of such concentrations."

Petitioners set forth in detail what they claimed to be "The intentional acts of malapportionment and gerrymandering for political advantage."

The attorney general, for defendant secretary of State, and the attorneys for intervening defendants, have vigorously opposed taking of proof that would establish the truth or falsity of petitioners' gerrymandering charge.

Petitioners' request to present this proof by discovery proceedings was denied by this Court on January 14, 1965, with Justices DETHMERS and KELLY dissenting to the denial.

Petitioners stressed the importance of this proof in a motion for reconsideration and the order of January 14, 1965, was amended on February 5, 1965, to read:

"Whether, and if so to what extent, petitioners' offer of proof should be granted and proof taken, may be briefed and will be decided after oral argument has been completed and considered."

Petitioners emphasize the importance of this Court recognizing their claim of improper motives and actions by those who created the Austin-Kleiner plan, by commencing their brief under the heading "statement of facts," as follows:

"By way of introduction to this statement of facts, the unique nature of this proceeding must be emphasized. Despite the fact that the proceedings raise disputed questions of fact, this Court has not allowed the presentation of proofs, offered by petitioners in support of their fact allegations. There is no record except the pleadings. Therefore, this proceeding resembles one in which a motion for summary judgment in favor of the defendants had been granted, and now the most favorable view must be taken of petitioners' allegations of fact and offer of proof. Thus, where relevant, those allegations of fact and the offer of proof in support thereof will, for purposes of this brief, be regarded as if actually proved."

Under this Court's rotation assignment of cases, I was assigned to write the first opinion, which I filed with my Associate Justices on September 22, 1965, reported in 376 Mich 420, and concurred in by Justice DETHMERS.

In this opinion I made known why I could find no merit to defendants' reasons why we should deny petitioners' request and referred to defendants' efforts to avoid the issue as follows (p. 437):

"In spite of petitioners' contentions, defendants have only presented this Court with a general denial. We have searched the brief of defendant and the briefs of intervening defendants in vain for any specific denial of petitioners' claim, such as the planners' use of voting results as they changed and rechanged the boundary lines of districts in their endeavor to create districts most favorable to the Democratic party and its candidates."

I granted petitioners' request, stating (p 439):

"An order will be issued providing that the depositions will be taken under the direction and supervision of the

presiding circuit judge of the county of Ingham; that said depositions will be taken as soon as possible and continued on to completion without delay; that 24 copies of the report of such hearing on depositions will be filed with the clerk of the Supreme Court and placed before the members of this Court, so that this Court can reach final determination in sufficient time to not unduly impede the coming 1966 elections."

Unable to obtain sufficient support for my recommendation of discovery, I, on October 27, 1965, filed an addendum to my opinion in which I said (pp 439, 440):

"I disagree that we have not the right and duty to dispose of the discovery question but after studying the opinions served and realizing that of the five Justices, other than myself, who have as of this date written opinions, three have expressed the thought that the commissioners should try anew to reapportion for the 1966 election, I have concluded to join with them with the understanding expressed that the commission shall immediately convene and shall conclude its work within 90 days and that we retain jurisdiction of all matters now before us, including the matter of discovery."

After the four commissioners refused to change or alter the 1964 Austin-Kleiner plan and the matter was returned to this Court, this Court on January 12, 1966, with Justices DETHMERS and KELLY dissenting, denied petitioners' discovery request.

This Court has not taken a favorable view of petitioners' allegations of fact and offer of proof, nor have we allowed proof in spite of this Court's liberal policy of allowing discovery.

We have acted contra to our principles of the past as enunciated by our illustrious predecessor, Justice WIEST, who, speaking for a unanimous Court, stated:

"We must assume that the right [discovery and taking of proof and depositions] accorded by the rule is invoked

[by 34 Michigan citizens] in good faith, and we cannot anticipate an abuse nor hold that possibility of abuse warrants inhibition of the right."*

Defendants rely on the United States Supreme Court decision of *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506), as giving them the right to disregard the Michigan Constitution, but nothing in that United States decision would justify the gerrymandering petitioners state they can prove if allowed by this Court.

Justice SOURIS states in his last opinion that (1) "Petitioners' allegations of partisan gerrymandering in the alternate Austin-Kleiner plan are untenable under either Federal or State law"; (2) "The United States Supreme Court has refrained from holding that such gerrymandering presents a reviewable Federal constitutional question"; and (3) "I am not persuaded by petitioners' argument that such claims present such Federal questions, nor do I regard the conclusory allegations petitioners have made legally adequate to warrant our breaking such new Federal ground." Answering Justice SOURIS, I refer to my previous opinion (376 Mich at pages 427, 428):

"*Answer to* [*defendants'*] *objection* (2): Petitioners answer the claim of defendants that if we would grant petitioners' request we would be outrunning the United States Supreme Court by calling attention to the fact that until *Baker v. Carr* (1962), 369 US 186 (82 S Ct 671, 7 L ed 2d 629), claims regarding apportionment of State legislatures were not justiciable at all; that from a fair reading of recent cases one can only conclude that a plan which intentionally operates to nullify the fair and effective representation of members of one particular political party is as much a denial of equal protection of the laws as districts of grossly disparate population; that on March 15, 1965, the New York supreme court, New York county, in *In re Orans' Petition*, 45 NY Misc 2d 616 (257 NYS2d

* *Nestle v. Fleming* (1933), 262 Mich 417.

839), affirmed by 15 NY2d 339 (258 NYS2d 825, 206 NE2d 854), held that gerrymandering constitutes a violation of the State's constitutional provisions, which were very similar to Michigan's; and that 'The argument of defendant and intervening defendants that there is no law against gerrymandering suggests that althought gerrymandering may be immoral, or unfair, or a sharp practice, nevertheless since there is no case law which says it is illegal, it should be condoned by this Court. The people of the State of Michigan are entitled to a higher standard of law.'

"It is not necessary for us to analyze or pass judgment on the presence or absence of Federal decisions *in re* gerrymandering. Suffice to say, there is no Federal decision that even intimates that this Court cannot or should not grant the petition if we deem it advisable."

"[7] *Reynolds v. Sims* (1964), 377 US 533 (84 S Ct 1362, 12 L ed 2d 506); *Fortson v. Dorsey* (1965), 379 US 433 (85 S Ct 377, 13 L ed 2d 290); *Wright v. Rockefeller* (1964), 376 US 52 (84 S Ct 603, 11 L ed 2d 512)."

I am in complete disagreement with those who claim that even though petitioners could sustain their claim by proof this Court would consider such proof as irrelevant and incompetent. I cannot conceive of any court creating by its approval an apportionment plan with such "unnaturally-shaped districts" so politically created.

As I conclude my part in the most important decision this Court has been called upon to make during my 12 years as a Supreme Court Justice, I regretfully conclude that this Court has denied petitioners the right to introduce proof that would be all-important in rendering a proper decision.

O'HARA, J. *(for remand to the commission).* With "recorded reluctance" I cast my vote to order the commis-

sion on legislative apportionment to adopt and publish the Austin-Kleiner alternate plan "for the 1964 legislative election." *In re Apportionment of State Legislature,* 373 Mich 250, 255.

I have not had at any time an opportunity to pass upon the validity of that plan by permissible State Constitutional standards. I do so now. I concur with Mr. Justice DETHMERS in his opinion.

SOURIS, J. *(for dismissal of petition).* On three prior occasions I have expressed my view that not only the 80-20 formula for apportioning the senate and the .7% formula for apportioning the house, both of which appear in article 4 of our Constitution of 1963, violate the equality clause of the Fourteenth Amendment of the United States Constitution, as a majority of this Court held in June of 1964, but also that, except as set forth in the margin,[1] none of the first six sections of said article 4 legally survived that ruling of constitutional invalidity. See *In re Apportionment of State Legislature—1964,* 372 Mich 418, 461-469; *In re Apportionment of State Legislature—1964,* 373 Mich 247, 257-262; and *In re Apportionment of State Legislature —1965,* 376 Mich 410, 458-469. It has been, and remains, my view that the invalidity of the cited provisions of article 4 imposed upon this Court responsibility for provisional reapportionment of the State's legislative power pending enactment of legislative or constitutional provisions for periodic reapportionment in accordance with the requirements of the Federal equality clause as construed

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[1] "Sec. 1. The legislative power of the State of Michigan is vested in a senate and a house of representatives.

"Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor. * * *

"Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population."

by the Supreme Court in *Reynolds v. Sims* (1964), 377 US 533 (84 S Ct 1362, 12 L ed 2d 506).[2]

It was my view in June of 1964 that this Court then should have adopted the alternate Austin-Kleiner plan as its own provisional legislative reapportionment plan to be effective for the 1964 elections, "leaving for the legislature so reapportioned and elected or to the people themselves by constitutional initiative or referendum processes the task of fashioning for the future a periodic reapportionment plan in conformance with the requirements of the Fourteenth Amendment as construed by the United States Supreme Court." 373 Mich 247, 260-261. None of my colleagues agreed. Instead, having concluded, albeit *sub silentio*, that all of section 6 of article 4 survived our declaration of constitutional invalidity of the reapportionment formulae of article 4, a majority of this Court (the CHIEF JUSTICE, and Justices BLACK, SMITH, O'HARA, and ADAMS), acting pursuant to the provisions of paragraph 7 of that section 6, directed the commission on legislative apportionment to adopt and publish the alternate Austin-Kleiner plan as the State's reapportionment plan but subject, after the 1964 elections to be held pursuant thereto, to the right of any elector to challenge that plan as provided by "the final paragraph of said section 6 of article 4." 373 Mich 247, 254. The commission performed its duty as directed by this Court's order to do and the secretary of State performed his by publishing and distributing

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[2] In addition to *Reynolds v. Sims*, see the following cases, decided on the same date, in which the Supreme Court approved judicially decreed provisional reapportionment plans pending revision of statutory or constitutional reapportionment provisions declared invalid: *WMCA, Inc. v. Lomenzo, Secretary of State* (1964), 377 US 633 (84 S Ct 1418, 12 L ed 2d 568); *Lucas v. Forty-Fourth General Assembly of the State of Colorado* (1964), 377 US 713 (84 S Ct 1472, 12 L ed 2d 632); *Maryland Committee for Fair Representation v. Tawes, Governor* (1964), 377 US 656 (84 S Ct 1442, 12 L ed 2d 595); *Davis v. Mann* (1964), 377 US 678 (84 S. Ct 1453, 12 L ed 2d 609); and *Roman v. Sincock* (1964), 377 US 695 (84 S Ct 1462, 12 L ed 620).

the plan as provided by section 6. In due course the 1964 legislative elections were held within the districts specified in the alternate Austin-Kleiner plan and, in the meantime, pursuant to the final paragraph of section 6, this proceeding was commenced to challenge the use of that plan of reapportionment in subsequent elections.

On November 2, 1965, this Court, by majority vote in this proceeding ordered the commission again to reapportion the legislative power of the State within 60 days thereafter. The secretary of State, by report and petition to this Court filed on January 4, 1966, has advised the Court that the commission again is unable to agree on a plan for such reapportionment and prays entry by this Court of a further order. While I did not join in the Court's November order, because in my judgment the plan adopted in June of 1964 was our judicially decreed provisional reapportionment plan and because time yet remained for legislative initiation of a constitutional amendment providing for a valid permanent periodic reapportionment plan, nor did the CHIEF JUSTICE and Mr. Justice SMITH, because in their judgment the petition failed to persuade them that petitioners were entitled to any relief provided in the eighth paragraph of section 6 of article 4, they and I, together with our colleagues, nonetheless share the responsibility for determining what course these proceedings now take.

It has been suggested that the Court's November order was predicated upon a finding that the alternate Austin-Kleiner plan, adopted by the commission pursuant to this Court's June, 1964 order is not a "final" one subject to the review provided for by paragraph 8 of section 6 of article 4 and that no "final plan" has as yet been adopted for want of a concurrence of a majority of the members of the commission. Therefore, it is argued, what the Court's majority did in November was, in the language of paragraph 8, to "direct • • • the commission to perform [its] duties." specified in paragraph 5 to be "to district and apportion the senate and house of representatives according to the provisions of this Constitution." See Mr. Justice BLACK's opinion at 376 Mich 410, 446, and his current opinion.

The commission having failed again to perform such duties thus hypertechnically construed, I would have supposed that the Court's only constitutional recourse within the limited powers granted it by section 6 of article 4 would be, under paragraph 7 thereof, to receive from the commissioners whatever proposed plans they care now to submit and to "determine which plan complies most accurately with the constitutional requirements" and direct that it be adopted by the commission. Thereafter, I would have supposed further, upon application of any elector, pursuant to paragraph 8, that the Court, consistent with the theory being considered, would be obliged again to direct the commission to perform its duties, thus beginning again the circuitous passage from paragraph 5 to paragraph 7 to paragraph 8 to paragraph 5 of section 6. But instead of pursuing this theory to its logical, though irrational, end, it is suggested that our constitutionally mandated duties, even as thus interpreted, be aborted by entry of our *sua sponte* order for a public drawing of lots to reduce the evenly divided bipartisan commission of eight members to an extra-constitutional commission of seven. See 376 Mich 410, 446, and Justice BLACK's current opinion. What once was regarded as "the constitutionally *exclusive* duty of the commission on legislative apportionment" (see 376 Mich 410, 444), a commission consisting of eight members selected as prescribed by what my colleagues regard as a continuingly valid constitutional provision of article 4, would become the *final* duty of a judicially sired commission of *seven* lacking any constitutional sanction whatever.

In addition, this interpretive theory reads into the Constitution provisions that are not there. For example, accepting for purposes of argument Justice BLACK's assertion (376 Mich 410, 446) of significance in the fact that paragraph 7 does not refer to a "final" plan in authorizing the Court to direct the commission to adopt one of the proposed plans submitted to the Court by the commissioners

after a commission deadlock, must not paragraph 6[3] of section 6 be read to mean that only a "final" plan (as defined by Justice BLACK) ever shall become law? I submit that if there be any virtue in judicial consistency it must be so read unless, of course, we are free to supplement the constitutional language to provide that, as well, any "non-final" plan adopted by the commission upon order of the Court also shall become law 60 days after publication, but only until the Supreme Court takes further action pursuant to paragraph 8. The absence of any language in section 6 so providing suggests to me that it was not intended to draw the distinction Justice BLACK draws between a plan adopted by a majority of the commission pursuant to its duties prescribed in paragraph 5 and a plan selected by the Supreme Court from among those proposed by the commissioners and ordered by the Supreme Court to be adopted by the commission pursuant to the provisions of paragraph 7.

Such an interpretation of section 6 of article 4 needlessly complicates simple language written into our Constitution, requires that even that interpretation of the section be scrapped in our present circumstance of continuing failure of voluntary concurrence of a majority of the commissioners upon a plan, and overlooks a rational interpretation of the section which the minutes of the constitutional convention disclose was the intention of the draftsmen themselves.

As I read section 6, and as did the constitutional convention delegates who drafted and proposed it, as will be demonstrated, *infra,* there is no such distinction between a plan adopted in the first instance by a majority of the commission and a plan adopted by the commission upon order of this Court following a commission deadlock. In

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[3] "Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of State shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan." Const 1963, art 4, §6, paragraph 6.

each case, the plan adopted becomes a "final" plan, it becomes law 60 days after publication; it becomes subject to an elector's challenge by proceedings brought under paragraph 8 of section 6 for judicial review thereof; and, upon finding that it fails to comply with the requirements of the Constitution, it may be remanded to the commission for further action. In addition, paragraph 8 provides that in such a proceeding the Supreme Court "shall direct the secretary of State or the commission to perform their duties," a provision inserted in paragraph 8, in my judgment, to provide a constitutionally specified judicial procedure in the nature of a writ of mandamus for enforcing performance of duties the secretary of State or the commission conceivably otherwise might refuse adamantly to perform. For example, a secretary of State might fail or refuse to publish and distribute a plan adopted by the commission pursuant to either paragraph 5 or paragraph 7, in which event the Supreme Court would direct him to do so. Similarly, if the commission or any of its members failed or refused to respond to the secretary of State's call to convene, the Supreme Court would direct it or them to do so. It stretches the judicial power of mandamus beyond its outer boundaries to suggest, as it has been suggested in Justice BLACK's latest opinion, that this Court can order the commission *to agree* upon threat of "an order of contempt bearing an accumulatory daily fine of each commissioner until the commission arrives at a 'final decision' under paragraph 5 of said section 6)."[4]

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[4] Justice BLACK urges the Court to find the commissioners in contempt of the Court's November 2 ,1965, order, in spite of the fact that such order specifically provided:

"2. In event of another deadlock of the commission, continuing through expiration of such 60-day period, that the secretary of the commission report promptly to this Court with petition for entry of such further mandatory order as the Court may, at the time, choose to enter pursuant to its broad powers as on mandamus to a State officer." (See 376 Mich 432—REPORTER.)

(Continued on next page)

This is the clear import of the constitutional language and, in addition, the debates of the constitutional convention delegates disclose beyond dispute that this is what they read the language to mean. Indeed, the very point was considered and the convention was assured that any plan which the Court ordered adopted would be a plan adopted by the commission and, as such, be reviewable by the Court. Consider this discussion on March 30, 1962, of a proposed amendment to section 6 of article 4:

"*Mr. W. F. Hanna:* • • •

"Now, the committee proposal is careful to say the Supreme Court shall determine the plan which shall be adopted. Perhaps this is a play on words. But we want the adoption to be made by the commission, not by decree of the Court, so that you end up with a mandamusable body or a suable body, and reviewable by the Court. I believe the language in committee was carefully considered to accomplish this point. So I urge the defeat of the Nord amendment, on the basis that the first line is not necessary, and the second line will be cured by the committee amendment, which preserves what we were very determined to do; that this Court would not decree the apportionment plan, but the Court would direct the plan that the commission would adopt, leaving the Court in a position to review the plan not of their own decree, but to review an action taken by a commission after the direction of the Supreme Court." 2 Constitutional Convention 1961, Official Record, p 2025.

The convention rejected Delegate Nord's amendment.

(Continued from preceding page)

Concerning mandamus, Justice BLACK quoted approvingly in *Superx Drugs Corporation v. State Board of Pharmacy* (1963), 372 Mich 22, 34, this language from *Toan v. McGinn* (1935), 271 Mich 28, 34:

" 'The applicable rules are clear. To support mandamus, plaintiffs must have a clear legal right to performance of the specific duty sought to be compelled; defendants must have the clear legal duty to perform such act; and it must be a ministerial act, one "where the law prescribes and defines the duty to be performed with such precision and certainty as to leave nothing to the exercise of discretion or judgment." 38 CJ, Mandamus, §72, p. 598. See, also *Globe Indemnity Co. v. Richer*, 264 Mich 224; *Sezor v. Proctor & Gamble Soap Co.*, 267 Mich 128.' "

The issue arose again during the debates of April 25, 1962:

"*Mr. Norris:* Mr. President, Judge Dehnke, my question was: In view of the fact that one of the reasons for an apportionment commission is to make available a review which had not been present thus far in a mandamusable fashion, is it the specific intent of this apportionment provision under the language contained in the proposal to provide for a review by the Court upon petition of the qualified electorate of the plan of apportionment adopted by the apportionment commission?

"*Mr. Dehnke:* I think the language speaks for itself, Dr. Norris. The Court may review, upon such a petition, a final plan adopted by the commission and make orders amending the plan if it fails to comply with the requirements of the Constitution. I think we may safely assume that the Court, if it makes any amendments, will make them in conformity to the requirements of the Constitution—the specifications, in other words.[5]

"*Mr. Norris:* My second question, Mr. President, Judge Dehnke, is with regard to the situation that prevails when there is disagreement among the members of the apportionment commission. Do I understand then the language here, in view of that contingency, is suggestive of this: that the various members of the apportionment commission then submit their respective plans to the Court for appraisal of the plan most nearly in accordance with the constitutional standards and the Court then issues an order?

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[5] As of April 25, 1962, the draft of section 6 being considered by the convention was substantially the same as that finally adopted, except that instead of providing that the Court "shall remand such plan to the commission for further action if it fails to comply with the requirements of this Constitution," it read "shall make orders amending such plan if it fails to comply with the requirements of this Constitution". 2. Constitutional Convention 1961, Official Record, p 2800. The former language was finally adopted, see 2 Constitutional Convention 1961, Official Record, pp. 3103, 3104, 3238, 3275.

"*Mr. Dehnke:* The Court then what?

"*Mr. Norris:* Issues an order.

"*Mr. Dehnke:* The court determines which of the plans complies most accurately with the requirements of the Constitution and returns it to the commission for the order to be made by the commission, according to the language of the proposal.

"*Mr. Norris:* It comes back then to the commission?

"*Mr. Dehnke:* Yes. The commission is subject to mandamus action by the Court if it fails to comply with the order of the court. • • •

"*Mr. W. F. Hanna:* Mr. President and Dr. Norris, I'd like to further amplify Judge Dehnke's answer to you. We made it in this manner so that deliberately, after the court gave its opinion and directed the commission, the order became appealable back to the Court if an elector felt that it was not proper. If we leave it to the Court to order, then, in effect, there is no appeal but to the Federal courts. We wanted the commission to enter the order so that it did become appealable back to the Court by this elector." 2 Constitutional Convention 1961, Official Record, pp 2802, 2803.

It should be noted that the passage just quoted, in addition to affirming that a plan which the Court orders the commission to adopt is a "final" plan reviewable by the Court under paragraph 8 of section 6, also explains the meaning of that language in paragraph 8 which provides that upon proper application of an elector the Court "shall direct the secretary of State or the commission to perform their duties." As Judge Dehnke makes clear the delegates conceived of a situation in which the commission might refuse to obey an order of the Court directing it to adopt a certain apportionment plan. In that event, upon application of an elector, the Court would issue an order in the nature of a writ of mandamus directing the commission to perform its duty, namely, to adopt the plan ordered by the Court.

The conclusion, that an apportionment plan which the Court orders the commission to adopt is a final plan reviewable under paragraph 8 of section 6, is logically imperative in the context of section 6. The convention record amply demonstrates that such a conclusion implements the express intent of the delegates. Finally, the only other suggested reading of section 6's language involves one in the unnecessary and illogical practical difficulties which I have discussed above. In such circumstances our duty is clear: to follow the Constitution, as it is written, as the delegates expressly intended it to be followed, and as every dictate of common sense and logic demands. This means that the alternate Austin-Kleiner plan, which the commission adopted in June of 1964 under order of this Court, is a final plan reviewable by this Court pursuant to paragraph 8 of section 6 of article 4 of the Constitution.[6]

While I continue to believe that this proceeding should be regarded as one invoking our general equitable power to provide by judicial decree another provisional legisla-

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[6] In the Preface to the Address to the People, it is stated, with reference to legislative apportionment:

"The significant decisions on this highly controversial subject are—

"1. Establishment of a commission equally representing the major political parties to reapportion periodically house and senate seats in accordance with requirement of the Constitution. Supreme Court review is provided in the event of disagreement of the commission." 2 Constitutional Convention 1961, Official Record, p. 3359.

In the address itself, section 6 is discussed, as is pertinent here, thusly.

"Upon the application of any elector the Supreme Court may compel the performance of duties imposed in this section and may review any plan adopted by the apportionment commission and remand it to the commission for further action if it fails to comply with the requirements of the Constitution." 2 Constitutional Convention 1961, Official Record, pp. 3371, 3372.

Nothing startling is revealed by these explanations because the constitutional language itself is clear, and the explanations comport with the meaning of the language as it has been developed, *supra*.

tive reapportionment plan for the year 1966 or until adoption of valid statutory or constitutional enactments providing for periodic legislative reapportionment (376 Mich 410, 469), unfortunately none of my colleagues shares my view. Nor do I share the view that no "final" plan yet has been adopted and, therefore, that this Court cannot review, within the purview of paragraph 8, any plan until such a "final" plan, as defined by Justice BLACK, is, if ever, adopted by the commission. The only practical alternative I perceive is that which I have adopted in this opinion in the interest of inviting decretal accord—considering section 6 of article 4 as of continuing constitutional validity and construing its provisions as I have. Thus, I have put aside, at least for awhile, views which I have expressed repeatedly, but without persuasive success. There remains, for me, only the review of the alternate Austin-Kleiner plan[7] required of this Court now by paragraph 8 of section 6, thus construed.

Justice SMITH, with whom the CHIEF JUSTICE concurred last November, considered these proceedings then to require such review and proceeded to do so. 376 Mich 410, 470. I join now in the views the CHIEF JUSTICE and Justice SMITH then expressed. Specifically, I agree with the following italicized findings then made by them:

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[7] In paragraph 3 of petitioners' "Amended Petition for Review of Apportionment Plan", the jurisdiction of this Court is invoked by direct quotation of paragraph 8 of section 6, with one clause significantly deleted therefrom:

"Upon the application of any elector filed not later than 60 days after final publication of the plan, the Supreme Court, in the exercise of original jurisdiction, * * * may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this Constitution."

The clause significantly deleted by the petitioners themselves of course is "shall direct the secretary of State or the commission to perform their duties."

1. *Petitioners' allegations of partisan gerrymandering in the alternate Austin-Kleiner plan are untenable under either Federal or State law.* As Justice SMITH observed, although presented with opportunities to do so, the United States Supreme Court has refrained from holding that such gerrymandering presents a reviewable Federal constitutional question. Indeed, in the latest case in which such a claim was presented to the Supreme Court, squarely, the Supreme Court affirmed, but without opinion, the district court's judgment in which such claim was rejected. See *WMCA, Inc. v. Lomenzo* (1965), 382 US 4 (86 S Ct 24, 25, 15 L ed 2d 2).[8] While I do not suggest that this Court would be barred from considering such claims until the United States Supreme Court affirmatively declares them to present justiciable Federal questions, I am not persuaded by petitioners' argument that such claims present such Federal questions, nor do I regard the conclusory allegations petitioners have made legally adequate to warrant our breaking such new Federal ground.

No such doubt exists concerning the right of the State to prescribe by constitution or constitutionally permitted legislative enactment, standards of apportionment designed to prohibit such gerrymandering. See *Reynolds v. Sims, supra,* 377 US 533, 578. But the difficulty with petitioners' State law claim is threefold: (1) Some of us have found (376 Mich 410, 458, 470) that none of such standards contained in article 4 of the Constitution of 1963 was severable from the invalid house and senate apportionment formulae and, hence, that they, likewise, were invalid. Absent valid State constitutional or legislative standards designed to preclude distortion of a rational apportionment scheme by partisan gerrymandering, as Justice SMITH wrote in November, it is not the province of this Court to write into article 4 such standards. (2) Whether or not required by valid constitutional provision, the CHIEF JUSTICE and Jus-

[8] Affirming *WMCA, Inc., v. Lomenzo* (SD NY), 238 F Supp 916.—REPORTER.

tices BLACK, SMITH and ADAMS held, a year ago last June (373 Mich 250, 251), and I agree now, that the alternate Austin-Kleiner plan, then ordered by the Court to be adopted by the commission, formed districts "as compact, contiguous, and regular in shape" and followed "county, city, and township boundaries as nearly as practicable." See 373 Mich 250, 254. Those are the very State standards[9] petitioners alleged in this proceeding were violated for partisan purposes by the alternate Austin-Kleiner plan. (3) Even if we assume that well pleaded allegations of partisan gerrymandering would raise a justiciable issue under our own State Constitution's equality clauses (article 1, §1 and §2), I do not regard petitioners' allegations legally sufficient to state a claim upon which judicial inquiry can be made. As I view the petitioners' complaint and their "offer of proof," they consist solely of conclusory allegations of suspicion and speculation supported only by reference to election results which, according to them, were achieved by the partisan gerrymandering by the alternate Austin-Kleiner plan. While petitioners assert they could support their claims if permitted to engage in a process of discovery, they have failed to submit an offer of proof of facts within their power to establish as distinguished from facts which they hope to discover.

2. *Our orders of June, 1964 (373 Mich 247, 248, 249), violated no concepts of due process.* While the practical facts of the then existing election process timetable required prompt action by this Court and by the commission following the long awaited decisions of the United States Supreme Court in *Reynolds v. Sims*, and its accompanying cases, I agree with Justice SMITH that it is something less than candor to plant a due process argument on the asser-

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[9] I find no continuingly valid requirement in article 4 that county boundary lines be not breached. The only provision that districts adhere to county lines is found in the last paragraph of section 3 which deals with the allocation of representatives in the house within multiple county representative areas by application of the apportionment formula which all members of the Court agree is constitutionally invalid.

tion that only five days elapsed between *Reynolds v. Sims* and the decision by this Court ordering commission approval of the alternate Austin-Kleiner plan. Justice SMITH in November accurately stated the facts that the commission had before it for many months before *Reynolds v. Sims* reapportionment plans based upon districts of equal population, that extended hearings lasting two full days before this Court explored population criteria for reapportionment purposes, and that a representation was made to this Court that the commission could furnish other population based plans in 24 hours if desired. 376 Mich 410, 479, 480.

One additional fact must be added. Now, 60 more days have been granted the commission to produce such additional plans, according to population criteria a majority of this Court said in November were now ascertainable, and yet no agreement thereon was reached by a majority of the commission. While other plans assertedly favoring population criteria were drawn and one of such plans has been offered for consideration by this Court, about which I shall have more to say later in this opinion, the point is that now, after 60 more days of deliberation by the commission, the petitioners' due process argument no longer has even a colorable basis for its assertion.

3. *The alternate Austin-Kleiner plan complies with the requirements of the Federal equality clause as those requirements have been construed by the United States Supreme Court in Reynolds v. Sims and, if we assume, arguendo, that the 1963 Constitution's standards of compactness, contiguity, and regularity of shape and of conformity to county,*[10] *city and township boundaries survived the constitutional infirmity of the reapportionment formulae, the plan conformed with those State standards, as well.*

During the course of these proceedings before this Court, the parties hereto brought to the attention of the Court the fact that an error exists in house district No 87 and No 88 of the alternate Austin-Kleiner plan as ordered by this

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[10] See footnote 9, p. 446, *supra*.

Court to be adopted by the commission in June of 1964. The error, variously described as a mathematical error and as a mechanical error, can be corrected and, in my judgment, it should be, as indicated in the margin.[11]

Six members of this Court, the CHIEF JUSTICE and Justices BLACK, SMITH, O'HARA and ADAMS and I, in June of 1964 expressly held that the alternate Austin-Kleiner plan complied with the requirements of the Federal equality clause. See 373 Mich 250, 251, 255, and 257. The CHIEF JUSTICE and Justices BLACK, SMITH and ADAMS also found that the plan's districts were compact, contiguous, and regular in shape and followed county, city, and township boundaries as nearly as practicable, subject, of course, to the controlling Federal constitutional objective of substantial population equality. See 373 Mich 250, 251. I now join them in this finding, noting as I do that this finding is a relative one which requires a judgment on how far one can or should go in subordinating the population equality requirements of the Federal Constitution to other considerations in reapportioning the legislative power of a State.

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[11] House district 87, consisting of all of Shiawassee county, and from Clinton county the townships of Watertown, DeWitt, Bath, Victor, Olive, and Duplain. Population: 71,564.

The description of house district 88 need not be changed except for its statement of the district's population, whichc should be increased to 71,851. With this correction made, the population disparities of the alternate Austin-Kleiner plan set forth in the Chief Justice's opinion in *In re Apportionment of State Legislature—1964*, 373 Mich 250, at 252, 253, are correct.

[The descriptions of house districts 87 and 88 as they appear in PA 1964, p 616, as revised, would then read as follows:

87. All of Shiawassee County; from Clinton County the townships of Bath, DeWitt, Duplain, Olive, Victor and Watertown.

88. From Eaton, County the township of Oneida and the city of Grand Ledge; from Clinton County the townships of Bengal, Bingham, Dallas, Eagle, Essex, Greenbush, Lebanon, Ovid, Riley, and Westphalia, and the city of St. Johns; all of Gratiot County; from Midland County, the townships of Edenville, Geneva, Greendale, Jasper, Lee, Porter, and Warrent and the city of Coleman.—REPORTER.]

It is my judgment, as it was the CHIEF JUSTICE's and Justices BLACK's SMITH's and ADAMS', that the alternate Austin-Kleiner plan did not so debase population equality in favor of district shape and form and adherence to boundary lines that it violated constitutional limits.

Nor does anyone suggest it does. What is said, instead, is that other plans now devised reduce even the alternate Austin-Kleiner plan's minor disparities almost to the vanishing point by minimizing concern for district shape and form and adherence to boundary lines (for example, senate and house plan No 7, the so-called Civic Searchlight plan which the commission considered and rejected by a vote of 7 to 1) and, *per contra,* by enhancing concern for shape, form, and boundaries, the alternate Austin-Kleiner plan's minor population *disparities* need be *multiplied* less than *twice* for the house and *multiplied* only *eightfold* in the senate (proposed Senate and House plan No 5).

What the proponents of these two new plans overlook is that the alternate Austin-Kleiner plan already has been adjudicated to comply with Federal constitutional standards and, if any State standards survive, to be in substantial compliance with them as well. To justify this Court's abandonment of a reapportionment and districting plan adopted upon this Court's order and pursuant to which the State's present legislature has been elected, would require persuasion that our prior adjudication of constitutionality was erroneous. I have not been persuaded that it was.

The thrust of the challenge against the alternate Austin-Kleiner plan is that it accomplishes greater equality than the Federal Constitution's equality clause requires at the expense of surviving State standards. It is not possible to claim, and nobody does, that the requirements of equality of population and all of the State standards claimed to survive can be met. If equality is approached, some boundary lines must be breached and some districts must be irregularly shaped. The alternate Austin-Kleiner plan approaches absolute population equality, perhaps more so than any other reapportionment plan in the United States,

to date. Necessarily, some boundary lines were breached, 18 out of the State's 83 counties' lines in the Senate and 32 in the House. However, preeminence of the Federal equality clause requirements, in our scheme of legal values, precludes any finding by this Court of constitutional infirmity in the alternate Austin-Kleiner plan on the ground that it renders equality too equally at the expense of subordinate State standards.

The only other plan offered this Court for its consideration is the so-called senate and house plan No 5.[12] Even in that plan, 3 county boundary lines are breached by the senate districts proposed and 11 by the house districts proposed. The cost, in terms of equality of population, of reducing the number of county boundary lines breached is, as suggested above, somewhat less than minimal. Population disparities in the house are almost doubled over those under the alternate Austin-Kleiner plan while in the Senate those disparities are magnified eight-fold.

It may be of some help to compare what this proceeding does not involve with what it does involve. It does not involve our determining whether proposed senate and house plan No 5 would pass constitutional muster if it alone were offered to replace an apportionment and districting plan declared to be constitutionally invalid. Neither does it involve our making a choice between the proposed senate and house plan No 5 and the alternate Austin-Kleiner plan for replacement of an existing apportionment and districting plan declared to be constitutionally invalid. Nor does it involve making a choice between a valid plan which achieves remarkable population equality and a proposed plan which to a much greater extent subordinates the overriding Federal constitutional requirements of equality in favor of alleged State requirements. Instead, as I have stated above, this proceeding involves only our review of the alternate Austin-Kleiner plan in the face of allegations that it fails to comply with constitutional requirements and such allegations I have found to be without merit.

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[12] Senate and House plan No. 7, the so-called Civic Searchlight plan, was rejected by a 7 to 1 vote of the commission and has not been proposed to this Court by any of the commissioners.

All of the foregoing considered, I announce my readiness to join my colleagues in affirming again, this time upon review under paragraph 8 of section 6 that the Austin-Kleiner plan of legislative apportionment, as herein corrected, meets all Federal and State constitutional requirements and in decreeing that it shall be followed in the legislative elections scheduled to be held in the fall of 1966 and thereafter until the next decennial reapportionment provided for by said section 6 of article 4 or until such other time as may be provided by valid constitutional amendment.

Whatever the result we attain now, it should be crystal clear to all who will to see that constitutional amendment is imperative. No further demonstration is necessary of the fact that neither a commission on legislative apportionment, the members of which are designated by the major political parties of this State, nor this Court, in the exercise of the responsibilities unwisely imposed upon it by article 4, can function as the majority of the people voting upon adoption of the Constitution of 1963 erroneously believed possible. Constitutional change is imperative and time rapidly is becoming of the essence if repetition of our current difficulties is to be avoided hereafter.

The order of this Court should accomplish three things, in my view: First, the alternate Austin-Kleiner plan as heretofore adopted, should be corrected as indicated in footnote 11 above. Second, the alternate Austin-Kleiner plan, as so corrected, should be held to comply with all Federal and State constitutional requirements and, therefore, should be decreed to be followed in the 1966 elections and thereafter until the next decennial reapportionment or as otherwise may be required by constitutional amendment. Third, the petition herein should be dismissed, but without costs, a question of public importance being involved.

ADAMS, J. (*for dismissal of petition*). I agree with Justice SOURIS that: (1) the alternate Austin-Kleiner plan adopted in June of 1964 is a final plan reviewable under

paragraph 8 of section 6 of article 4 of the 1963 Constitution; (2) petitioners' allegations are insufficient to state a legal claim of gerrymandering (see 5 below); (3) petitioners have been afforded due process; (4) the alternate Austin-Kleiner plan complies with requirements of the Federal equality clause; (5) petitioners have failed to plead facts from which it could be found that the alternate Austin-Kleiner plan is in such violation of the 1963 Michigan Constitution as to require that it be vacated.

With regard to (5) above, allegations that certain senate districts "are neither compact nor convenient", "are not as rectangular in shape as possible", that certain house districts "do not follow city or township boundaries where applicable", or "are not as nearly square in shape as possible" are conclusions, not statements of fact. It is not too difficult to shape square, rectangular or compact, a single district. The jigsaw arises from Michigan's two peninsulas with their some 3,000 miles of shoreline out of which must be created 110 house districts and 38 senate districts that conform (1) to overriding Federal standards, and (2) to legitimate State standards.

The recent 60-day remand to the apportionment commission demonstrates that it is possible to come up with numerous plans, all of which apparently have some merit. Because of the nature of Federal constitutional standards, however, there is never full conformity with State standards. As was noted in *In re Apportionment of State Legislature—1964*, 373 Mich 250, 253:

"All plans to some degree, and of manifest necessity, cross or recross county, city or township lines."*

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* The existing Austin-Kleiner Plan had a House population disparity between the largest and smallest districts of 2,027 and breached 32 out of 83 Michigan county lines. Its Senate had a population disparity of 3,082 and breached 18 of the county lines.

Plan No. 5 resulted in a Senate population disparity of 16,590, while breaching 3 county lines, and a House population disparity of 5,620, while breaching 11 county lines.

Consequently, once a plan has been finally adopted, as the alternate Austin-Kleiner plan has been, for its validity to be successfully attacked there must be plead substantial departure from State standards. That has not been done here.

Petitioners have failed to demonstrate that discovery would be appropriate to this case. All of the proceedings of the apportionment commission are open, public records. The official figures of the United States census, election precincts, political and geographic boundaries, are matters of which this Court takes judicial notice. The motivations, cogitations and machinations of the commissioners, even if discoverable, would not be relevant. Only the plan is subject to review.

SMITH, J. (*for dismissal of petition*). This is a continuation of apportionment proceedings begun in 1964, and occasioned by the adoption of the Michigan Constitution of 1963 (effective January 1, 1964). This new fundamental State law, containing new legislative apportionment formulae, was adopted before the decision in *Reynolds v. Sims* (1964), 377 US 533 (84 S Ct 1362, 12 L ed 2d 506). The decision in *Reynolds*, coming as it did after proceedings had been commenced under the Michigan Constitution, had a profound effect upon our processes. Inasmuch as *Reynolds* effectively struck from the Michigan Constitution significant apportionment provisions, this long, continuous proceeding reflects not only an attempt on the part of the commission on legislative apportionment and this Court to follow Michigan constitutional provisions, but, also, to adjust such provisions to the impact of the *Reynolds Case*. See *In re Apportionment of State Legislature —1964*, 372 Mich 418, also, *In re Apportionment of State Legislature—1964*, 373 Mich 247, and also, *In re Apportionment of State Legislature—1964*, 373 Mich 250. Likewise, see *In re Apportionment of State Legislature—1965*, 376 Mich 410.

In my opinion of last November (1965), we attempted to deal squarely with the issues presented by petitioners in

this phase of the proceedings. See *In re Apportionment of State Legislature—1963*, 376 Mich 410, at 470. We might end the present writing here by referring the reader to that opinion in which the Chief Justice joined. However, this is terminal to a historic proceeding and due to a distressing inclination in some regions of this Court to cut away the vitals of the 6-2 decision (373 Mich 260) establishing present apportionment, a move which might have been unwittingly made to divert the matter to another forum, we are moved to record some additional facts and comments for all who may follow:

Last November, by a vote of 5-3, with the writer one of three Justices in dissent, this Court remanded the cause to the apportionment commission to "proceed anew with such work and deliberations as will enable the commission to district and apportion the senate and house of representatives according *to now ascertainable as well as applicable requirements* of the Federal Constitution and of the Michigan Constitution." 376 Mich 410, at page 481. (Emphasis supplied.)

Comment: What these "ascertainable as well as applicable requirements" are the majority did not say. Justice BLACK, *however tried to cure this deficiency by a solo opinion, as will be noted below.*

Those of us who dissented from the order did so not only because the order of the majority did not appear to be consonant with some of the views expressed by the majority Justices in their individual opinions preceding the order, but also "for the reason that the majority's order requires the commission to devise a plan of reapportionment of legislative power in accordance with standards not defined in any one of the four opinions signed by the aforesaid majority of five Justices of the Court." 376 Mich 482.

Although there is no record of any official communication between the apportionment commission and this Court between November 2d and November 20, 1965, Justice BLACK gleaned from sources which he did not reveal, that

some members of the apportionment commission had expressed, in their early deliberations, a failure on the part of the Court majority "to provide expected 'guidelines'". He, therefore, issued a solo opinion directed at the commission on November 20, 1965, which appears at 376 Mich 483. In it; he stated that "Justice ADAMS [had] reviewed these guidelines with due accuracy in his opinion filed November 2d." Justice BLACK then recorded "unconditional indorsement" of all of Justice ADAMS' opinion except the "first and final sentences thereof." This constituted an indorsement of Justice ADAMS' views relative to what we have come to term "antigerrymandering standards" which were said by Justice ADAMS to remain in the Michigan Constitution untouched by the decision in *Reynolds v. Sims, supra.*

As to such standards, Justice ADAMS had this to say (p 457): "At any rate, it seems clear that a State may forbid political gerrymandering, and I interpret the provisions of the Michigan Constitution *with regard to compactness, shape, et cetera,* as being precisely for that purpose. Though the Federal standards are overriding and must be followed, I see no reason why the standards and provisions in our own State Constitution should not also be applied if it is possible to do so. I do not regard the failure of the 80-20 formula as having destroyed the standards." (Emphasis supplied.)

Comment: The difficulty with this approach to guidelines is readily apparent. First, the apportionment scheme for house and senate contained in article 4 of the Michigan Constitution of 1963 is far more complex than the requirements of "compactness, shape, et cetera." Keystone of the senate formula as contained in section 2 of said article was the so-called 80-20 provision which gave 80% of weight to population and 20% to land area. Everyone concedes that this was outlawed by Reynolds v. Sims, supra. *We carry the analysis further. Based upon the 80-20 formula was a computation which resulted in the State as a whole having 500 apportionment "factors." For apportionment*

purposes, counties were then required to be classified based upon whether or not a particular county had less than 13 apportionment factors or more than 13 apportionment factors. See article 4, §2, Michigan Constitution of 1963. Then, according to this constitutional formula, "the method of equal proportions [was to be] applied to the apportionment factors." After a provision for allocation of senate seats, based upon such determinations, then and only then did the requirements of "compactness, shape, et cetera", to use Justice ADAMS' *phrase, come into play. The quoted section provided as follows: "Such counties shall thereafter be arranged into senatorial districts that are compact, convenient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16." Article 4, §2,* supra.

The quotation above from the senate apportionment formula itself is sufficient to demonstrate the point which I tried to make in my opinion of last November (376 Mich 470) that at the very heart of the senate formula was the so-called 80-20 provision. When the 80-20 provision was struck down by Reynolds v. Sims, supra, *then the whole formula fell with it because of the unseverability of interdependent provisions. Extracting the 80-20 factor from the senate apportionment formula was like pulling the keystone from a building arch: the whole structure crumbled.*

The same may be said of the apportionment formula for the house of representatives contained in §3 of article 4. There, the keystone of that formula was the .7 per cent moiety clause. Although that section commands that "The districts shall consist of compact and convenient territory contiguous by land", it is equally clear that this command is necessarily dependent upon the .7 per cent moiety clause. The language of the section expresses this command: "Each county which has a population of not less than seven-tenths of one percent of the population of the State shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of

the State shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the State." Const 1963, art 4, §3. It is likewise conceded by all parties that the .7 per cent moiety clause was also felled by Reynolds v. Sims. *It is also clear that the manner in which this key provision of the house formula was employed in section 3 made it subject to the same ruling of severability already expressed by me. (376 Mich 470.)*

We come, therefore, in this narrative to the point last November when the Court majority decided to remand the matter to the apportionment commission for further proceedings. It was clear then and even more clear now that this was destined to be an exercise in futility.

Comment: The prime reason for the futile deadlock which occurred was evident in apportionment commission proceedings which took place in 1964. The prime cause lies with the constitutionally designated method of selection of apportionment commissioners. Such commissioners are selected by the major political parties in equal number and from specified geographical areas set forth in the Constitution. Responsibility to party is thus an unspoken but primary consideration. The second reason why the apportionment commission predictably stalemated was due to the failure on the part of the Court majority to state with a measure of precision in what way the unsevered portions (to follow the logic of their order) of the Michigan Constitution should be applied, while acknowledging that the 80-20 provision and the .7 per cent moiety clause no longer governed.

With all due respect to my colleagues in the majority, it is my earnest belief that they shared the erroneous view that a remand in this situation is something akin to the traditional remand of the Court to a lower court for the ascertainment of facts and the discovery and application of pertinent legal principles. This was asking too much. Again, with all due respect to the eight honorable gentle-

men of the apportionment commission who labored so diligently both in 1964 and 1965 to develop a plan upon which a majority might agree, we suggest that the party responsibility that each gentleman bore by virtue of his appointment by his party made this a very difficult task and, in the final analysis, practically impossible. What is good for one party is often bad for the other. Commissioners chosen by political parties alone, without the purifying procedure of voter approval, are expected to be non-political. No realist would ever expect so much.*

What might have been provided in the Constitution is a tie-breaker. This could have been accomplished by a simple amendment which would give the secretary of State a vote only in case the commissioners deadlocked. The reason, and the only reason, for alluding to this office is because the secretary of State is, by the Constitution, secretary of the apportionment commission and is, of course, chief elections officer of the State. The secretary of State, therefore, could bring to such proceedings a certain amount of skill in election matters.

We come now to a report and review of commission proceedings after remand by the Court majority. All of the official files of the apportionment commission including maps, plans, census data, and debates (electronically recorded) are properly before us. This was accomplished at our January 12, 1966, conference on motion and order of this Court. I have reviewed at length the records and files of the commission, including the recorded debates, and am thoroughly impressed with the extraordinary care and competence which each commissioner brought to the deliberations.

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* Republican members: Cochairman Wilber M. Brucker (Detroit), lawyer and former Governor of Michigan; William F. Hanna (Muskegon), lawyer, Ralph Huhtala (Kingsford), public relations director; Alfred O. LaPorte (Standish), insurance and real estate broker.

Democratic members: Cochairman Richard H. Austin (Detroit), certified public accountant; Ivan Brown (Iron Mountain), labor representative; Henry J. Dongvillo (Scottville), farmer; A. Robert Kleiner (Grand Rapids), lawyer.

Comment: Two things are quite clear: one, that the commissioners were severely handicapped by the lack of a definitive statement from this Court as to what standards, in the opinion of the majority, remained to be applied; and two, that the broad principle of representation, "as nearly equal as practicable", when unaccompanied by specific permissible antigerrymandering standards, makes for infinite possibilities in the way house and senate districts may be formed; witness that each set of partisans, while using the same broad criteria, produced plans which were quite unsatisfactory to each other. Although partisanship was disavowed by several commissioners, Commissioner LaPorte candidly acknowledged the following: "I honestly feel that every amendment proposed on the other side, I am talking for myself, how I honestly feel, had your own political considerations involved. And, as far as that is concerned, I would probably say the reverse is true."

The record shows that the apportionment commission met in formal sessions on November 12th, 19th, 24th, and December 3d, 10th, 16th, 17th, 22d, 23d, 29th, 30th, 31st, in the year 1965, of course. A number of apportionment plans and amendments were introduced by the various commissioners but none was able to muster the support of a majority of the eight commissioners. The commissioners started out in their November 12th meeting by disagreeing in principle as to how new plans were to be formulated. The Republican commissioners urged that districts be drawn on the basis of a predetermined ratio of the largest district to the smallest district; Democratic members pointed to *Roman v. Sincock*, 377 US 695, (84 S Ct 1449, 12 L ed 2d 620), as holding that any such mechanical approach to apportionment is unconstitutional. The Democratic commissioners insisted that population was the overriding guideline, while acknowledging that any plan ought to cross as few political subdivision boundaries as possible and also that district composition ought to be as compact and as regular in shape as possible.

Despite this disagreement, however, the respective partisans started, in earlier commission sessions, to develop

and present plans which followed the broad principle of *Reynolds v. Sims, supra.* Both sets of partisans submitted plans which to some degree sought to improve upon the existing Austin-Kleiner alternate plan already in effect. None, however, was able to achieve the desired majority vote, not even an amendment designed to cure a mechanical error in the computation of population in existing house of representative districts No. 87 and No. 88.

The Republican members of the commission then returned to their position of advocating a formula with a predetermined ratio of maximum variation between the smallest and largest districts. They introduced the so-called "5% plan", which is officially labelled Michigan senate plan No 5 and Michigan house plan No 5. Both house and senate plans substantially reduce the number of county lines crossed while substantially increasing the population disparities between districts, compared with the Austin-Kleiner alternate plan now in effect. The Democratic members of the commission then countered with senate plan No. 6 and house plan No. 6, which had a predetermined ratio of population deviation amounting to 15%. Although plan No 6 was introduced by Democratic members for discussion purposes, it was not supported by the votes of the Democratic membership. They labelled it unconstitutional, pointing to the wide population disparities between districts. They say that the plan was offered merely to show what could be done if a predetermined ratio was used with the purpose of maintainlng county boundary lines as the prime object. In senate plan No. 6, *none* of the 83 county boundary lines was breached, and in the house plan only *three* out of 83 county lines were breached. Compared with Republican plan No 5, this was said to be a big improvement.

Comment: The game of thrust and parry was underway.

Even after the secretary of State had reported to the Court that the apportionment commissioners were unable to agree upon a plan, Democratic Commissioners Brown and Dongvillo countered the Republican 5% plan with a 5% plan of their own which crossed one fewer county line in the senate formula and two fewer lines in the house plan.

Comment: It was clearly apparent then that using broad criteria, partisan possibilities are numerous.

Returning now to the proceedings at the apportionment commission level between November 2d and December 31, 1965, there was also presented a plan by Commissioner Brucker identified as plan No 7, which was introduced at the instance of an organization known as the Civic Searchlight of Detroit which plan improved upon the present plan somewhat by further minimizing population variations between districts, but the plan breached far more county lines than does the existing Austin-Kleiner alternate plan, and severely scrambled districts in the metropolitan areas. It was suggested that the plan also had partisan motivation.

Comment: The writer has reviewed with great care the offerings and the deliberations of the commission on remand. The general recitation presented immediately above, along with the debates recorded on electronic tapes, reflect most clearly the need for a constitutional rewriting of the apportionment formula for both house and senate with the one-man one-vote principle of Reynolds v. Sims *as the keystone. In the surcharged atmosphere of the partisan political process, what is most evidently needed is a formula with reasonable specificity, allowing what Commissioner Hanna refers to in the debates of the commission as "limited discretion" in the apportioning body. This "limited discretion" could be accomplished by writing into the apportionment formula what has been referred to as "anti-gerrymandering standards" as well as other provisions for election convenience. However, it is to be clearly understood that no such standards or provisions could be in substantial derogation of the one-man one-vote principle. See the discussion of permissible deviation in* Reynolds v. Sims, *supra, and the discussion of* Reynolds *in my opinion of last November, 376 Mich 470.*

We return to our narrative at the point where the secretary of State in his capacity as secretary of the commis-

sion on legislative apportionment, reported to the Court, pursuant to the order of November 2d, that the apportionment commission "was deadlocked and unable to agree upon a plan" at the end of the Court-ordered 60-day work session. This report was filed on January 4, 1966. Since that time, the Court has received every conceivable type of pleading and counter-pleading from petitioners Badgley, *et al.*, from intervening defendants Scholle, *et al.*, from the Republican apportionment commissioners and the Democratic apportionment commissioners, and others. It is trite but true to say that "the Court has been fully advised in the premises." The following is an abbreviated chronicle of significant docket entries in this proceeding, No. 50,999, occasioned by the electors' suit instituted by petitioners Badgley, *et al.*, and occurring after the December 31st deadlock:

1. January 4, 1966: a "statement of Republican members on report of deadlock", in which said members reiterated support of their 5% plan and blamed the Democratic members for failing to reach agreement on a plan.

2. January 8, 1966: a reply by Democratic commission members giving their version of why the commission failed to agree, including an item-by-item enumeration of compromises offered to opposition members. Said commissioners asked that the electors' petition be dismissed.

3. January 10, 1966, a brief was filed on behalf of intervening defendants Scholle, *et al.*, insisting that the 5% plan offered by the Republican commissioners is unconstitutional because it is arbitrary insofar as it uses a mechanical formula, and also that the population disparities are excessive. The brief then alleged and attempted to show that the plan was gerrymandered.

4. January 11, 1966, Republican members of the apportionment commission filed an answer to the "statement" of the Democratic members previously filed. The statement denied the charge of bad faith and pointed out that not only had they submitted a plan with minimum boundary crossings but that they had also submitted plans, earlier in

the sessions, which came closer to the principle of population equality than does the existing plan. It was reiterated that the present plan has at least *three* districts which are badly gerrymandered.

5. January 12, 1966, the Court met in special conference and by majority vote finally denied petitioners' request for discovery and for oral argument; also, we ordered up from the secretary of State's office all of the "proceedings and records of the commission on legislative apportionment."

Then in the most significant vote of the day, a motion was made that the present Austin-Kleiner plan be declared unconstitutional. The following is a direct quotation from Court minutes of the day:

"Motion was made by Justice O'HARA, supported by Justice DETHMERS, that the Court hold the Austin-Kleiner plan unconstitutional and offensive to the 1963 State Constitution. Nays: Chief Justice T. M. KAVANAGH and Justices BLACK, SMITH, ADAMS and SOURIS. Yeas: [Justices] O'HARA, DETHMERS and KELLY. Motion not carried."

6. January 14, 1966. In an amended statement, the Democratic apportionment commissioners charged that the Republican-offered plan No 5 was badly gerrymandered and offered such "distorted shapes" as a "boot-shaped" district and an "arrow-shaped" district and an "angle-worm line" dividing one of the counties. The statement made the assertion that the Republican members were attempting to gain an "even greater partisan advantage."

7. January 15, 1966. A brief was filed on behalf of petitioners Badgley, *et al.*, replying to the brief of intervening defendants Scholle, *et al.* This brief followed the basic position of the Republican commissioners by pointing to a number of apportionment cases throughout the country in which disparities not exceeding 5% had been court-approved. Further, the brief urged adoption of the Republican sponsored plan No 5, and in the alternative asked the Court to adopt some one of the other plans before it in

the place of the existing plan which the petitioners attacked in the first instance.

8. January 19, 1966. The Republican apportionment commission members replied to the "amended statement" of the Democratic commissioners in which they denied that plan No 5 was gerrymandered for partisan advantage or that their plan No 5, the so-called "5%" plan, contained a mechanical standard of population inequality.

9. January 21, 1966. Democratic apportionment commissioners Brown and Dongvillo offered a Democratic version of a 5% plan, in which they alleged that the Republican 5% plan was gerrymandered but that the Democratic "5%" plan was not. They did not ask the Court to adopt their 5% plan, but said simply that it was an improvement over the Republican "5%" plan.

10. January 28, 1966. The intervening defendants filed a reply brief in which it insisted that the Republican 5% plan was clearly and obviously gerrymandered for partisan advantage and sought to demonstrate this proposition by a brief analysis of some of the districts included in said plan. They asked that we reaffirm the validity of the existing plan under which the legislature was elected in 1964.

11. February 1, 1966. A rejoinder brief was filed in behalf of petitioners Badgley, *et al.*, countering certain assertions made in the reply brief of intervening defendants. The rejoinder brief reiterated support for the Republican 5% plan and in the alternative the Democratic 5% plan offered by Commissioners Brown and Dongvillo.

12. February 1, 1966. Republican apportionment commissioners filed an answer to the statement and offering of Democratic Commissioners Brown and Dongvillo. They pointed out that the Democratic plan was never submitted to the apportionment commission prior to its December 31, 1965, adjournment. Republican commissioners said that they "welcome their filing" a 5% plan "although it fails to do what it claims for it, and contains a number of significant gerrymandered districts." The statement then con-

tains a lengthy analysis of the Brown-Dongvillo 5% plan, in which it is contrasted unfavorably with the Republican 5% plan. The statement was concluded with the repeated urging that the Court adopt the Republican 5% plan.

13. February 1, 1966. A "petition to intervene or in the alternative to appear amici curiae" in which certain parties sought to intervene and reintroduced plan No 7, referred to in apportionment commission proceedings as the Civic Searchlight plan.

14. February 1, 1966. Justice BLACK filed a "memorandum," which was released to the public that day. Among other things, it contained a suggestion for removing one of the apportionment commissioners from further consideration of the matter by the drawing of lots. It was also suggested that in the event the commissioners then failed to agree on a "final" plan that they might be held in contempt and assessed heavy fines. No comment is necessary or desirable. The memorandum must be read to be fully evaluated.

15. February 4, 1966. A response of intervening defendants to the petition to intervene or to appear as *amici curiae* was filed. Said intervening defendants objected to intervention but agreed to the appearance of the parties as *amici curiae*.

16. February 9, 1966. A petition to intervene or in the alternative to appear as *amici curiae* was denied by this Court.

17. February 10, 1966. Republican apportionment commissioners filed a pleading to correct errors appearing in previously filed pleadings.

18. February 21, 1966. Republican apportionment commissioners issued a "supplementary statement" claiming that the order of the Court majority dated November 2, 1965, "wiped the slate clean," that is to say, erased the existing Austin-Kleiner alternate plan under which the present legislature was elected in 1964. The Court was again urged to adopt the Republican 5% plan.

Comment: Nothing is clearer from the above review of the offerings of petitioners Badgley, et al., and the Republican apportionment commissioners, on one side, and intervening defendants Scholle, et al., and the Democratic commissioners, on the other, that there is an amazing rapport in the positions of the groups constituting the respective "sides" indicated above. All of their pleadings, repleadings and arguments are in substantial support of one another. The Republicans want change, preferably to their own 5% plan. The Democrats would keep the present plan, but just in case the Court is intrigued by the 5% argument then the Democrats offer their version of a 5% plan. This again shoves the Court into the unenviable position of appearing to decide between 2 sets of partisans, no matter what the clearly overriding legal principles. Small wonder the late Mr. Justice Frankfurter expressed himself in Baker v. Carr, *369 US 186, 266 (82 S Ct 691, 7 L ed 2d 663), as wanting no part of this "political thicket."*

DECISION.

I

As already indicated, our views as to the vital issues raised by petitioners in this electors' suit were substantially dealt with last November when the Court majority remanded the matter to the commission. We reiterate and readopt here and now the views set forth in that opinion, 376 Mich 470. In addition several events have transpired which require some comment.

II

Of major significance is the vote taken on the present plan by the Court at a special conference, January 12, 1966, called for the primary purpose of considering what to do about apportionment, in the wake of the commission stalemate. This portion of the Court minutes has been cited above and is requoted here for emphasis:

"Motion was made by Justice O'HARA, supported by Justice DETHMERS, that the Court hold the Austin-Kleiner plan unconstitutional and offensive to the 1963 State Constitution.

"Nays: Chief Justice T. M. KAVANAGH and Justices BLACK, SMITH, ADAMS, and SOURIS.

"Yeas: [Justices] O'HARA, DETHMERS and KELLY. Motion not carried."

The minutes were officially approved by the Court at the February 8th conference. Now, the "Austin-Kleiner Plan" referred to in the minutes is the present apportionment plan approved by the Court in June, 1964 (373 Mich 250), under which the present legislature was elected in November, 1964. There is some suggestion in the opinion of Justice DETHMERS that the present plan has been measured by this Court only in terms of Federal constitutional requirements of the equal protection clause as construed in *Reynolds*. There are two reasons why this is not correct. First, in the June, 1964, decision establishing the existing plan, the opinions subscribed to by at least 5 Justices recognized the existing plan (Austin-Kleiner alternate) as the plan which most accurately complied with constitutional requirements as construed in *Reynolds*. The language of the opinion by Chief Justice T. M. KAVANAGH is clear:

"While it is not possible to develop detailed constitutional requirements, there can be no question as to the overriding requirement—'districts, in both houses of its legislature, as nearly of equal population as practicable.' The Austin-Kleiner alternate districting and apportionment, filed with this Court on May 11, 1964, *most nearly complies with said constitutional requirement.*" (Emphasis added) 373 Mich 254.

The CHIEF JUSTICE was joined in this opinion by Justices BLACK, SMITH and ADAMS. In a concurring opinion Justice O'HARA accepted the principle of "equality of population as nearly as practicable" as the "pre-eminent test. Justice O'HARA said this was the "only existing guideline." 373 Mich 255. The import of all this is that under the suprem-

acy clause of the Federal Constitution,* the interpretation of the requirements of the equal protection clause of the Fourteenth Amendment, as construed in *Reynolds,* were "written in" to our own Constitution as if there in the first place. The "constitutional requirements" test contained in paragraph 7, section 6, article 4, of the Michigan Constitution of 1963, of necessity includes relevant Federal constitutional requirements. Where Federal and State constitutional requirements are in harmony, they must be construed and applied together. Where in disharmony, the Federal requirements are overriding. In the proceeding before us, the overriding Federal requirement of population equality was and is the prevailing State constitutional requirement. Hence, the present plan has been adequately measured.

A second reason why Justice DETHMERS is not correct in his appraisal in founded in the minutes of January 12th, quoted above. If there were ever any doubt about Austin-Kleiner alternate having met relevant State constitutional requirements, even assuming that they are severable, then this notion was dispelled by the 5-3 vote of January 12th, as quoted. Although the vote was negative on a motion to declare Austin-Kleiner "unconstitutional and offensive to the 1963 State Constitution," when this Court says that a matter is not unconstitutional, this necessarily means that it is constitutional. There is no middle ground.

III

In his opinion, Justice DETHMERS also places the stamp of approval on the 5% plan offered by the Republican apportionment commissioners. Although nothing else is properly before the Court without it *first* having found that the present plan "fails to comply with the requirements of this

*US Const, art 6, §2.—REPORTER.

Constitution," as that phrase has been construed, nevertheless, we would not let the moment pass without some comment on the percentage plans based upon assumed mathematical formulae. We think that neither the Republican nor the Democratic 5% plan can meet the constitutional tests set forth in *Reynolds* and also applied in *Roman v. Sincock*, 377 US 695 (84 S Ct 1449, 12 L ed 2d 620). In the *Roman Case*, the Supreme Court of the United States unequivocally disavowed the mathematical standards which both Republican and Democratic versions of a 5% plan clearly seek to implement. In that case, the lower court "suggested that population-variance ratio smaller than 1½ to 1 would presumably comport with minimal constitutional requisites." See footnote 21, page 710, *Roman v. Sincock, supra*. As to that issue, the Court had this to say:

"In our view the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a State legislative apportionment scheme under the equal protection clause. Rather, the proper judicial approach is to ascertain whether, under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

This language is entirely applicable to the two 5% plans as well as to the Democratic 15% plan. Neither can pass constitutional muster, not alone because of mathematical rigidity of formulae, but also, because of gross population disparities between districts, a matter clearly evident from the record and discussed, in part at least, in the current opinion of Justice SOURIS.

Nor can either 5% plan claim any virtue with respect to partisan gerrymandering. Both have districts which are oddly shaped and what is clear from apportionment commission records is that such are neither accidental nor un-

avoidable. However, as to the limits of review on the question of gerrymandering, see a discussion of *WMCA, Inc. v. Lomenzo*, 382 US 4 (86 S Ct 24, 15 L ed 2d 2) in my November opinion, 376 Mich at pages 477, 478. We would specifically reaffirm the position taken therein.

IV

The question has been raised as to whether the present plan is a "final" plan reviewable under paragraph 8 of section 6. Justice SOURIS has dealt lucidly and comprehensively with this issue in his current opinion and we are heartily in accord with his reasoning and with his conclusion that the plan is a final plan.

V

Finally, we concur in all other portions of Justice SOURIS' current opinion not already mentioned and to the extent that his opinion is not in conflict with this opinion or with my opinion of last November (376 Mich 470). We perceive only minor differences in our approaches based primarily upon differences in points of departure occasioned by his prior writings. We are, therefore, in accord with the language of his final paragraph which would correct the minor error in the existing plan and hold, if that is necessary, that such corrected plan complies with all Federal and State constitutional requirements. We concur further that such plan is to be followed in the 1966 elections "and thereafter until the next decennial reapportionment or as otherwise may be required by constitutional amendment." As previously held in my November opinion, we would dismiss the petition, without costs.

T. M. KAVANAGH, C.J., and SOURIS, J., concurred with SMITH, J.

APPENDIX C

OPINIONS OF THE MICHIGAN SUPREME COURT
June, 1964, 373 Mich. 251-262, 128 N.W. 2d 722-727

KAVANAGH, C. J. On June 15, 1964, in the case of *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506)* the United States supreme court in the majority opinion of Chief Justice Earl V. Warren said (pp 568, 577):

"We hold that, as a basic constitutional standard, the equal protection clause requires that the seats in both houses of a bicameral State legislature must be apportioned on a population basis. * * *

"By holding that as a Federal constitutional requisite both houses of a State legislature must be apportioned on a population basis, we mean that the equal protection clause requires that a State make *an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable.*" (Emphasis added.)

On June 17, 1964, this Court entered an order directing the commission on legislative apportionment to proceed to adopt a plan for districting and apportionment of the senate and house of representatives in accordance with the constitutional requirements and guidelines provided by the United States supreme court in *Reynolds v. Sims*, 377 US 533 (84 S Ct 1362, 12 L ed 2d 506); *WMCA, Inc. v. Lomenzo, Secretary of State*, 377 US 633 (84 S Ct 1418, 12 L ed 2d 568); *Maryland Committee for Fair Representation v. Tawes, Governor*, 377 US 656 (84 S Ct. 1442, 12 L ed 2d 595); *Davis v. Mann*, 377 US 678 (84 S Ct 1453, 12 L ed 2d 609; *Roman v. Sincock*, 377 US 695 (84 S Ct 1462, 12 L ed 2d 620); and *Lucas v. Forty-Fourth General Assembly of Colorado*, 377 US 713 (84 S Ct 1472, 12 L ed 2d 632) decided June 15, 1964, requiring that the districting and apportionment of both houses of State legislatures shall be as nearly as practicable on an equal population basis. The commission was allowed until 5 p.m., Friday, June 19, 1964, to adopt

* 32 LW 4535.—REPORTER.

a plan in accordance with said constitutional requirements. The order provided that, "In the event the commission is unable to agree upon a plan, each member of the commission, individually or jointly with other members, may submit additional proposed plans to this Court within the time limit of 12 noon, Saturday, June 20, 1964."

The Court is now advised that the commission on legislative apportionment did not reach an agreement. Various of its members, jointly and severally, have filed plans with this Court—3 proposed plans for the districting of the Michigan senate and 4 proposed plans for the districting of the Michigan house of representatives.

Analysis of the senate plans reveals the largest and smallest deviation from the average district of 205,895 to be as follows:

	SENATE		*Difference Between Largest and Smallest*
	Largest	*Smallest*	
Austin-Kleiner	207,094	205,067	2,207
Brucker-Huhtala-LaPorte	216,118	200,121	15,997
Hanna	232,384	160,918	71,466

Analysis of the plans for the house reveals that the largest and smallest deviation from the average house district of 71,127 under each of the plans is as follows:

	HOUSE		*Difference Between Largest and Smallest*
	Largest	*Smallest*	
Austin-Kleiner	72,200	69,118	3,082
Hanna Plan #15	98,719	50,459	48,260
Original Hanna-Brucker Plan	101,120	48,395	52,725
Plan #16	98,719	48,395	50,324

This Court, after examining each of the plans, finds as a fact that all plans to some degree, and of manifest necessity, cross or recross county, city or township lines.

The Court also finds as a matter of fact based upon the certification of James M. Hare, secretary of State for the State of Michigan and chief elections official of the State, that ample time exists for holding orderly primary and general elections for the State legislature in the event a plan is ordered placed in effect by Thursday, June 25, 1964.

The Court further finds that 1 plan only constitutes a plan for districting and apportioning the senate and house of representatives in accordance with the constitutional requirements set forth by the United States supreme court on June 15, 1964, requiring districts in both houses to be of equal population as nearly as practicable.

The Court finds that the so-called Austin-Kleiner plan filed May 11, 1964, and resubmitted by reference June 20, 1964, purports to be a plan for districting and apportioning both houses of the Michigan legislature based upon districts containing population as nearly equal as practicable. By such plan districts in both the senate and house of representatives are composed of territory containing population as equal as the 1960 Federal decennial census permits. Subject to this controlling objective of substantially equal population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous, and regular in shape, and do follow county, city, and township boundaries as nearly as practicable.

With respect to the minimum percentage of the State's population capable of electing a majority of the senate—a consideration deemed important by the United States supreme court—the figure is 52.5%.

With respect to the house of representatives, the minimum percentage of the State's population sufficient to elect a house majority is also over 50%—specifically 50.6%.

While it is not possible to develop detailed constitutional requirements, there can be no question as to the overriding requirement—"districts, in both houses of its legislature, as nearly of equal population as is practicable." The Aus-

tin-Kleiner alternate districting and apportionment, filed with this Court on May 11, 1964, most nearly complies with said constitutional requirement.

Therefore, it is ordered that the commission on legislative apportionment be, and it hereby is, directed to adopt and publish forthwith as provided in section 6 of article 4 of the Constitution of the State of Michigan of 1963, the aforesaid Austin-Kleiner plan, which plan shall be placed in effect for the primary and general elections of 1964 irrespective of whether or not said plan shall be challenged upon the application of an elector pursuant to the final paragraph of said section 6 of article 4.

Considering the limited time which remains for the giving of notices of 1964 legislative elections, no motion for application for a stay of this order will be entertained by this Court. Any person deeming himself aggrieved by this order may, for the purposes and requisites of USSC Rules 18, 50, and 51,* proceed to move or apply forthwith for a stay pursuant to said Rules, in the same manner as if he had previously and vainly moved or applied to this Court for such stay.

BLACK, SMITH, and ADAMS, JJ., concurred with KAVANAGH, C.J.

O'HARA, J. (*concurring*). With recorded reluctance I join in the direction to the apportionment commission to adopt and publish the plan designated the alternate Austin-Kleiner plan for the 1964 legislative elections.

I am mandated by the United States supreme court to accept the principle of "equality of population as nearly as practicable" as the pre-eminent test. With this principle I am entitled to equate the maintenance of the territorial integrity of political subdivisions. To what extent I do not know, except as that extent is suggested in *WMCA, Inc., v. Lomenzo, Secretary of State*, 377 US 633 (84 S C 1418, 12 L Ed 2d 568).

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* FCA, Court Rules, part 2, pp. 183, 198, 199; 28 USCA, Rules, 1963 pocket part, pp. 12, 13, 35.—REPORTER.

With this as the only existing guideline I must accept it for the imminent 1964 legislative elections and thus take the action I do here.

I am not in accord with the concept that both houses of a bicameral State legislature cannot be apportioned to recognize area interests in the legislature of a State of such divergent socio-political complexion as ours.

I am in specific disagreement with the repudiation of the so-called "Federal analogy" argument. It strikes, in my view, at the very heart of the check and balance system.

I must accept the directive of the United States supreme court as I understand it. That is to subordinate all other considerations to the equality of population as nearly as practicable. Hopefully, there will be determinative litigation that may well more nearly define the relationship of equality of population with those other historic factors that have been considered in legislative apportionment of the several States.

I concur with the majority order of the Court.

DETHMERS, J. (*dissenting*). Recognizing that the United States supreme court decisions of June 15, 1964, require that the districting and apportionment of both houses of State legislatures shall be as nearly as practicable on an equal population basis, we are convinced that, subject to that limitation, the decisions did not invalidate the requirements which are not violative thereof contained in article 4, §6, of the Michigan Constitution of 1963 governing legislative apportionment and districting.

A role of the supreme court of the United States is to interpret, construe, and apply the provisions of the Constitution of the United States, including those of its Fourteenth Amendment. The role of the Supreme Court of Michigan is dual in that it must perform that same function, in the light of United States supreme court decisions, and, in addition, to the extent not inconsistent therewith, interpret, construe, and apply the provisions of the Constitution of the State of Michigan.

We believe that the so-called Brucker, Huhtala, LaPorte plan, submitted to this Court on June 20, 1964, dividing each of the congressional districts most recently constituted by act of the legislature into 2 State senatorial districts and districting and apportioning the house according to their plan, previously submitted by them to this Court on February 14, 1964, as House Plan No 9, complies most accurately, subject to United States constitutional requirements as declared by the United States supreme court on June 15, 1964, to the requirements of the Michigan Constitution of 1963 and, at the same time, as the United States supreme court requires, districts and apportions as nearly as practicable on an equal population basis, considering what the practicabilities thereof are under the requirements of the Michigan Constitution of 1963. Notable among the latter requirements are those of creating districts of regularity in shape, following, to the maximum extent possible, county, city and township lines, with due regard for the integrity of the boundaries thereof. We hold accordingly.

KELLY, J., concurred with DETHMERS, J.

SOURIS, J. (*concurring, June 22, 1964*). I concur in the result reached by the Court's order entered today reserving the right, however, to set forth my reasons for this special concurrence in an opinion to be filed.

SOURIS, J. (*June 24, 1964*). While concurring in the Court's order of June 22, 1964, requiring the apportionment and districting of the State's legislative power in accordance with a plan filed on May 11, 1964, by legislative apportionment commissioners Austin and Kleiner,* I dis-

* Following release on April 10, 1964, of the opinions in *In re Apportionment of Legislature—1964*, 372 Mich 461, Commissioners Austin and Kleiner, on May 11, 1964, petitioned the Court for leave to file an alternate districting and apportionment plan, attached to the petition, which eliminated those features of previously filed plans found constitutionally objectionable in 2 of the Court's April opinions. On May 13th, this Court granted their petition to file the alternate plan. It is that alternate plan which the Court on June 22d designated for adoption by the legislative apportionment commission.

sent from so much of that order which expressly or impliedly acknowledges the continuing validity of the first 6 sections of article 4 of the Constitution of 1963 except for section 1, the first paragraph of section 2, and that portion of section 3 which reads:

"The house of representatives shall consist of 110 members elected for two-year terms from single-member districts apportioned on a basis of population."

Last April I concluded that the 80-20 formula contained in article 4 for the apportionment and districting of senate seats "expressly dilutes the importance of population in densely populated areas and enhances it in those areas sparsely populated" and that the formula devised for apportioning and districting the house seats "likewise debases population as a determinative factor in apportionment of legislative power." *In re Apportionment of Legislature—1964*, 372 Mich 461, 468. It was then my conclusion that:

"The blunt truth is that inequality is built into the legislative apportionment provisions of the Constitution of 1963 in flagrant disregard of the principles of equality required by the Fourteenth Amendment." 372 Mich at 468.

The United States supreme court now has reached the same conclusion. See opinion of reversal and remand to the United States district court for the Eastern district of Michigan in *Marshall v. Hare* (1964), 378 US 561 (84 S Ct 1912, 12 L ed 2d 1036) handed down June 22, 1964.

Having concluded that the apportionment and districting provisions for both the senate and house of representatives were violative of the Fourteenth Amendment, it was my conclusion (as it was United States District Judge Stephen J. Roth's conclusion, in dissent, in *Marshall v. Hare* [1964], 227 F Supp 989, 1004, reversed and remanded *supra*) that section 6 of article 4 which established the commission on legislative apportionment to "district and apportion the senate and house of representatives according to the provisions of this Constitution" likewise had to be held void. Section 6, in my view, was so dependent upon

the continuing validity of the preceding sections by which the commission's duties were specified and expressly limited, that it could not survive alone. I could not then, and cannot now, but conclude that except as indicated above, the first 6 sections of article 4, as they relate to the apportionment of legislative power, are inseparable and that the constitutional invalidity of 1 or more of said sections invalidates the remainder. *Campau v. City of Detroit*, 14 Mich 276, and *People, ex rel. Attorney General v. Sperry & Hutchinson Co.*, 197 Mich 532, 542 (LRA 1918A, 797). It is incomprehensible to me that the people of this State in their adoption of the Constitution of 1963 would have intended to grant a commission composed of 8 members selected by the 2 major political parties in the State from 4 specifically designated areas of the State the power of apportionment and districting of the State's legislature without the very specific and rigidly limiting directions unconstitutionally and ineffectually sought to be imposed upon the commission by the preceding sections of article 4.

It was my belief in April, as it is now, that absent valid constitutional delegation of legislative apportionment and districting duties the legislature has the inherent power, as said by Mr. Chief Justice Warren for the supreme court in *Maryland Committee for Fair Representation v. Tawes, Governor* (1964), 377 US 656, 675, 676 (84 S Ct 1442, 12 L ed 2d 595) (32 LW 4573, 4578), "to enact at least temporary reapportionment legislation pending adoption of State constitutional provisions relating to legislative apportionment which comport with Federal constitutional requirements."

Were there time yet remaining, as there was in April, I would defer to the legislature in apportioning and districting the State's legislative power for the forthcoming year. However, now too little time remains for such nice regard for the fact that the "legislative reapportionment is primarily a matter for legislative consideration and determination." *Reynolds v. Sims* (1964), 377 US 533, 586

(84 S Ct 1362, 12 L ed 2d 506) (32 LW 4535, 4550). Certainly, in the interest of avoiding disruption of the election process, and indeed of the legislative process itself, considering our previous declarations of invalidity of our prior Constitution's apportionment provisions (the 1952 amendments to sections 2 and 4 of article 5 of the Constitution of 1908) pursuant to which the current legislature was elected (see *Scholle v. Secretary of State*, 367 Mich 176, 180, 232, certiorari denied, *sub nom, Beadle v. Scholle*, June 22, 1964, by the United States supreme court, 377 US 990 [84 S Ct 1901, 12 L ed 2d 1043] [32 LW 3440]), it is our judicial responsibility to order now, in time for the forthcoming primary and general election,* a provisional reapportionment plan for this year's legislative elections, leaving for the legislature so reapportioned and elected or to the people themselves by constitutional initiative or referendum processes the task of fashioning for the future a periodic reapportionment plan in conformance with the requirements of the Fourteenth Amendment as construed by the United States supreme court. Such indeed was the procedure approved by the United States supreme court in *Reynolds v. Sims, supra,* and impliedly approved in *WMCA, Inc., v. Lomenzo, Secretary of State* (1964), 377 US 633 (84 S Ct 1418, 12 L ed 2d 568) (32 LW 4551); *Lucas v. Forty-Fourth General Assembly of the State of Colorado* (1964), 377 US 713 (84 S Ct 1472, 12 L ed 2d 632) (32 LW 4557); *Maryland Committee for Fair Representation v. Tawes, Governor, supra; Davis v. Mann* (1964), 377 US 678 (84 S Ct 1453, 12 L ed 2d 609) (32 LW 4579); and *Roman v. Sincock* (1964), 377 US 695 (84 S Ct 1462, 12 L ed 2d 620) (32 LW 4583).

Fortunately, we in Michigan have the benefit of the Austin-Kleiner plan for prompt adoption by this Court in the

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* As noted in the Court's opinion of June 22d, the secretary of State for the State of Michigan and chief election official of the State, has certified to this Court that ample time exists for holding orderly primary and general elections for legislative offices provided an apportionment and districting plan is adopted by June 25, 1964.

exercise of its general equity powers. It is significant to note at this point that no objection has yet been made to the plan's provisions except that its design is a political gerrymander and that it accomplishes greater population equality than some regard is required by the United States supreme court's recent decisions applying the Fourteenth Amendment's equality clause to legislative apportionment matters. The claim of political gerrymander significantly is unsupported by even the barest allegations of fact. The other claim that we are not compelled to render equality so equally, does not persuade me that something less merits our choice.

I have joined in the Court's order requiring the forthcoming legislative elections to be conducted in districts set forth in the alternate Austin-Kleiner plan and the State's legislative power to be apportioned as provided therein, not pursuant to any of the provisions of section 6 of article 4 of the Constitution of 1963, but rather in exercise of this Court's general equitable power to provide by judicial decree a provisional legislative reapportionment pending valid legislative or constitutional enactments providing for periodic reapportionment. Furthermore, I reaffirm my earlier finding that, except as stated in the first paragraph of this opinion, the first 6 sections of article 4 of the Constitution of 1963 are void.

APPENDIX D

ORDER OF MICHIGAN SUPREME COURT

At a session of the Supreme Court of the State of Michigan, held at the Supreme Court Room, in the Capitol, in the City of Lansing, on the 6th day of April in the year of our Lord one thousand nine hundred and sixty-six.

Present the Honorable Thomas M. Kavanagh, Chief Justice; John R. Dethmers, Harry F. Kelly, Eugene F. Black, Theodore Souris, Otis M. Smith, Michael D. O'Hara, Paul L. Adams, Associate Justices.

This matter having been brought to this Court on plaintiffs' petition and defendants' answers, and the pleadings of various apportionment Commissioners, and the briefs and arguments of respective counsel, all having been duly considered by the Court and due deliberations had thereon, and this being a proceeding within the original jurisdiction of the Court and the Court being divided as to disposition, it is ordered that the petition be and the same is hereby dismissed. It is further ordered that no costs be awarded herein.

SOURIS, J. I concur in dismissal, four justices (the Chief Justice, Justices Smith, Adams and I) having concluded that the Austin Kleiner plan complies with all federal and state constitutional requirements and that the petition should be dismissed, three justices (Justices Dethmers, Kelly and O'Hara) having concluded that the Austin Kleiner plan should be declared unconstitutional and should be remanded to the legislative apportionment commission for further action, and one justice (Justice Black) having concluded to abstain from decision herein (see 377/396 at 416).

Justices Dethmers, Kelly, Black and O'Hara record opposition to entry of an order dismissing this proceeding on the ground that it does not command a majority vote of the Court.

State of Michigan—ss.

I, Donald F. Winters, Clerk of the Supreme Court of the State of Michigan, do hereby certify that the foregoing is a true and correct copy of an order entered in said court in said cause; that I have compared the same with the original, and that it is a true transcript therefrom, and the whole of said original order.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Supreme Court at Lansing, this 6th day of April, in the year of our Lord one thousand nine hundred and sixty-six.

/s/ Donald F. Winters,
Clerk.

(Seal)

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APPENDIX E

APPORTIONMENT
AND
DISTRICTING PLAN
OF
SENATE
AND
HOUSE OF REPRESENTATIVES

1964

State Of Michigan

James M. Hare
Secretary Of State

June 23, 1964
2nd Printing – 7/65

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* *The population figures used in this publication are those included with the plan when it was submitted to the Supreme Court.*

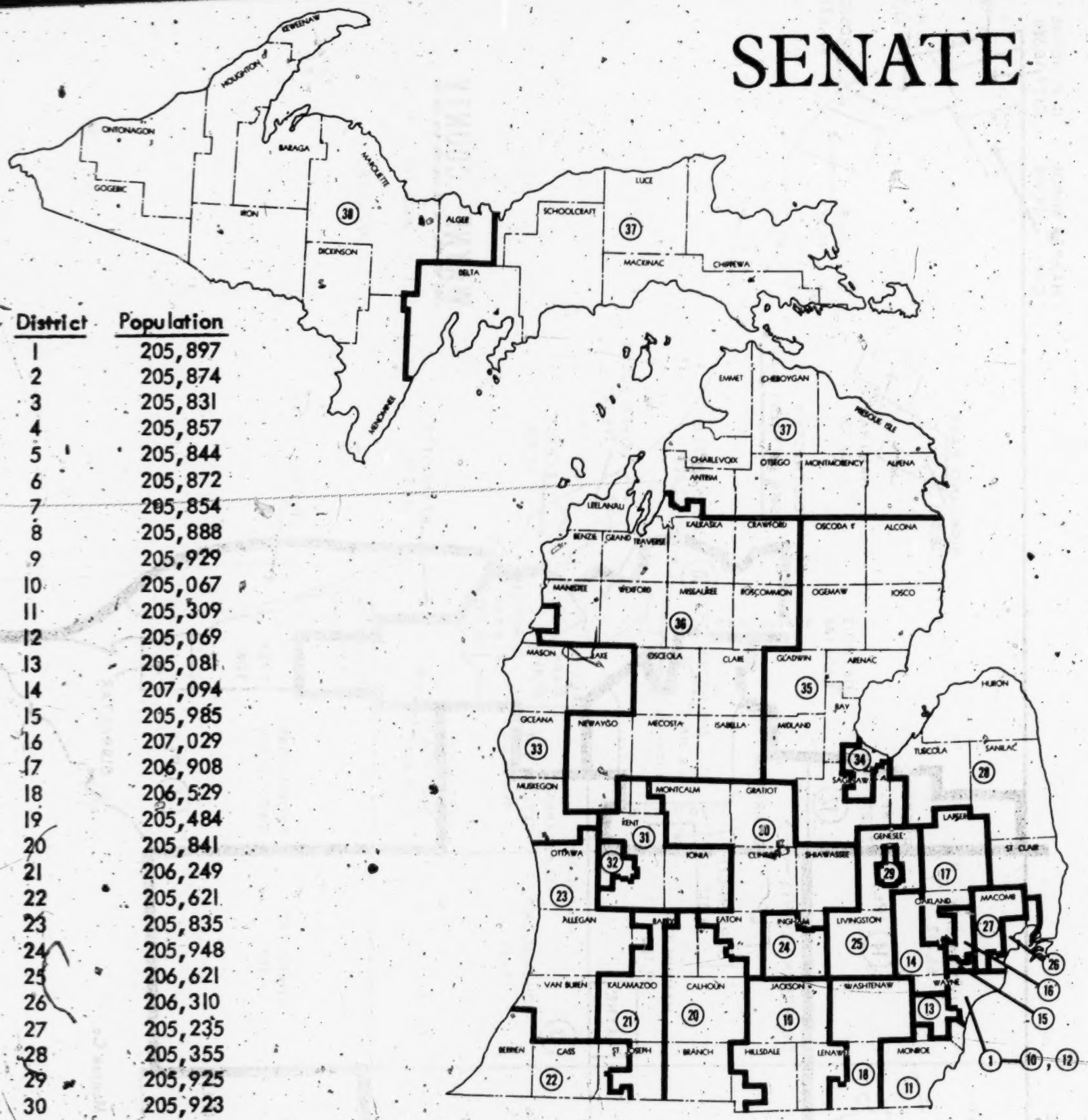
In accordance with the provisions of Paragraph 6 of Section 6 of the Constitution of the State of Michigan as implemented by Act 46 of The Second Extra Session of 1963, I, James M. Hare, Secretary of State do hereby publish this Apportionment and Districting plan of the Senate and House of Representatives of the State of Michigan adopted by the Apportionment Commission on June 23, 1964 upon direction of the Supreme Court, and do hereby certify that such publication was made on June 23, 1964.

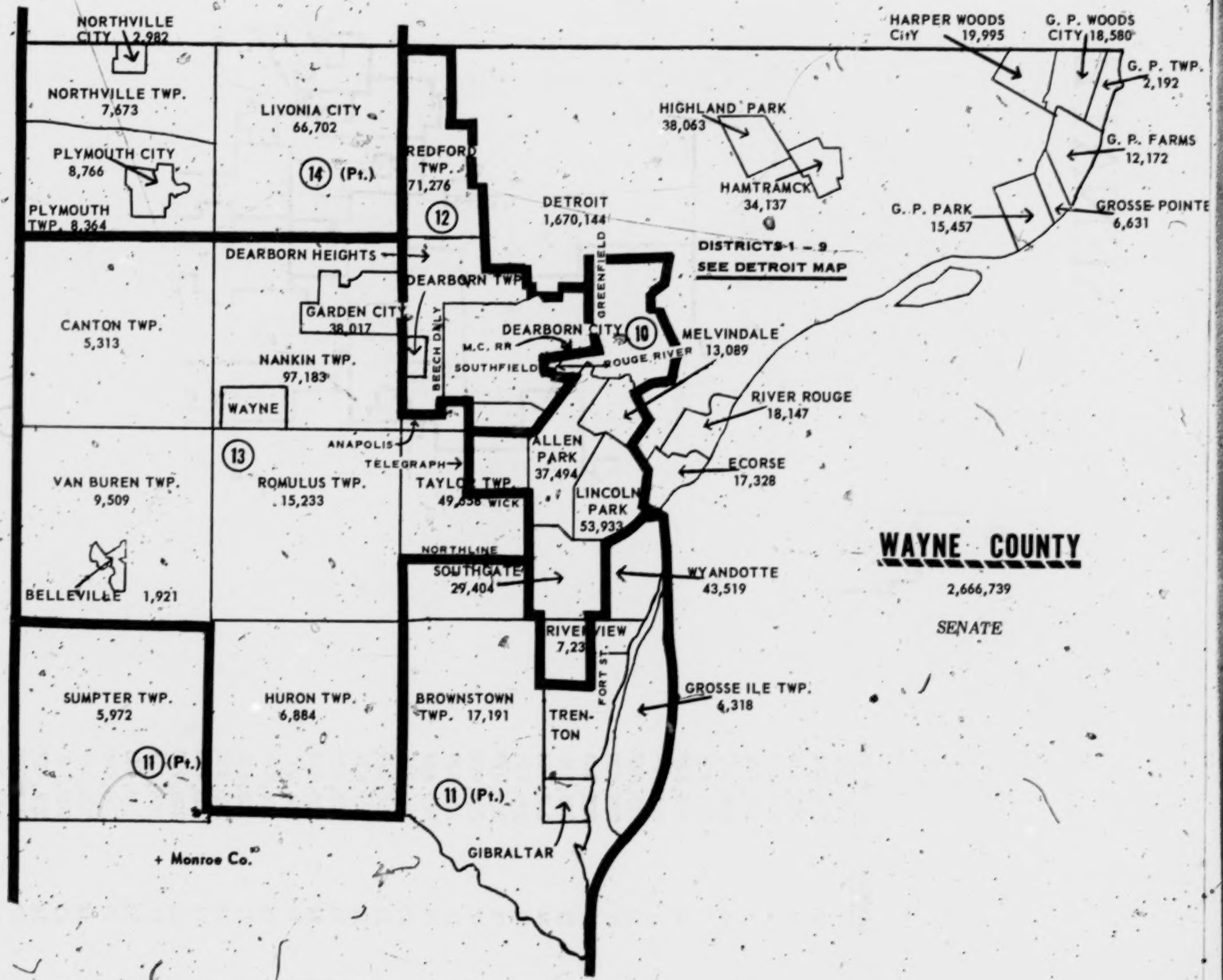
JAMES M. HARE
Secretary of State
June 23, 1964

NOTE: *All boundary descriptions used in this plan are those which were in effect on April 1, 1960.*

SENATE

District	Population
1	205,897
2	205,874
3	205,831
4	205,857
5	205,844
6	205,872
7	205,854
8	205,888
9	205,929
10	205,067
11	205,309
12	205,069
13	205,081
14	207,094
15	205,985
16	207,029
17	206,908
18	206,529
19	205,484
20	205,841
21	206,249
22	205,621
23	205,835
24	205,948
25	206,621
26	206,310
27	205,235
28	205,355
29	205,925
30	205,923
31	205,425
32	206,433
33	205,958
34	206,469
35	205,118
36	206,127
37	205,959
38	205,265
Total	7,824,018

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NORTHVILLE TWP. 7,673
PLYMOUTH CITY 8,766
PLYMOUTH TWP. 8,364
LIVONIA CITY 66,702
14 (Pt.)
REDFORD TWP. 71,276
12
DETROIT 1,670,144
DISTRICTS 1 – 9
SEE DETROIT MAP
HIGHLAND PARK 38,063
HAMTRAMCK 34,137
HARPER WOODS City 19,995
G. P. WOODS CITY 18,580
G. P. TWP. 2,192
G. P. FARMS 12,172
G. P. PARK 15,457
GROSSE POINTE 6,631
DEARBORN HEIGHTS
DEARBORN TWP.
GARDEN CITY 38,017
CANTON TWP. 5,313
NANKIN TWP. 97,183
WAYNE
BEECH DALY
GREENFIELD
DEARBORN CITY
10
M.C. RR
SOUTHFIELD
ROUGE RIVER
MELVINDALE 13,089
RIVER ROUGE 18,147
ECORSE 17,328
ALLEN PARK 37,494
LINCOLN PARK 53,933
ANAPOLIS
TELEGRAPH
13
VAN BUREN TWP. 9,509
ROMULUS TWP. 15,233
TAYLOR TWP. 49,[illegible] WICK
NORTHLINE
SOUTHGATE 29,404
WYANDOTTE 43,519
BELLEVILLE 1,921
RIVERVIEW 7,23[illegible]
FORT ST.
GROSSE ILE TWP. 4,318
SUMPTER TWP. 5,972
HURON TWP. 6,884
BROWNSTOWN TWP. 17,191
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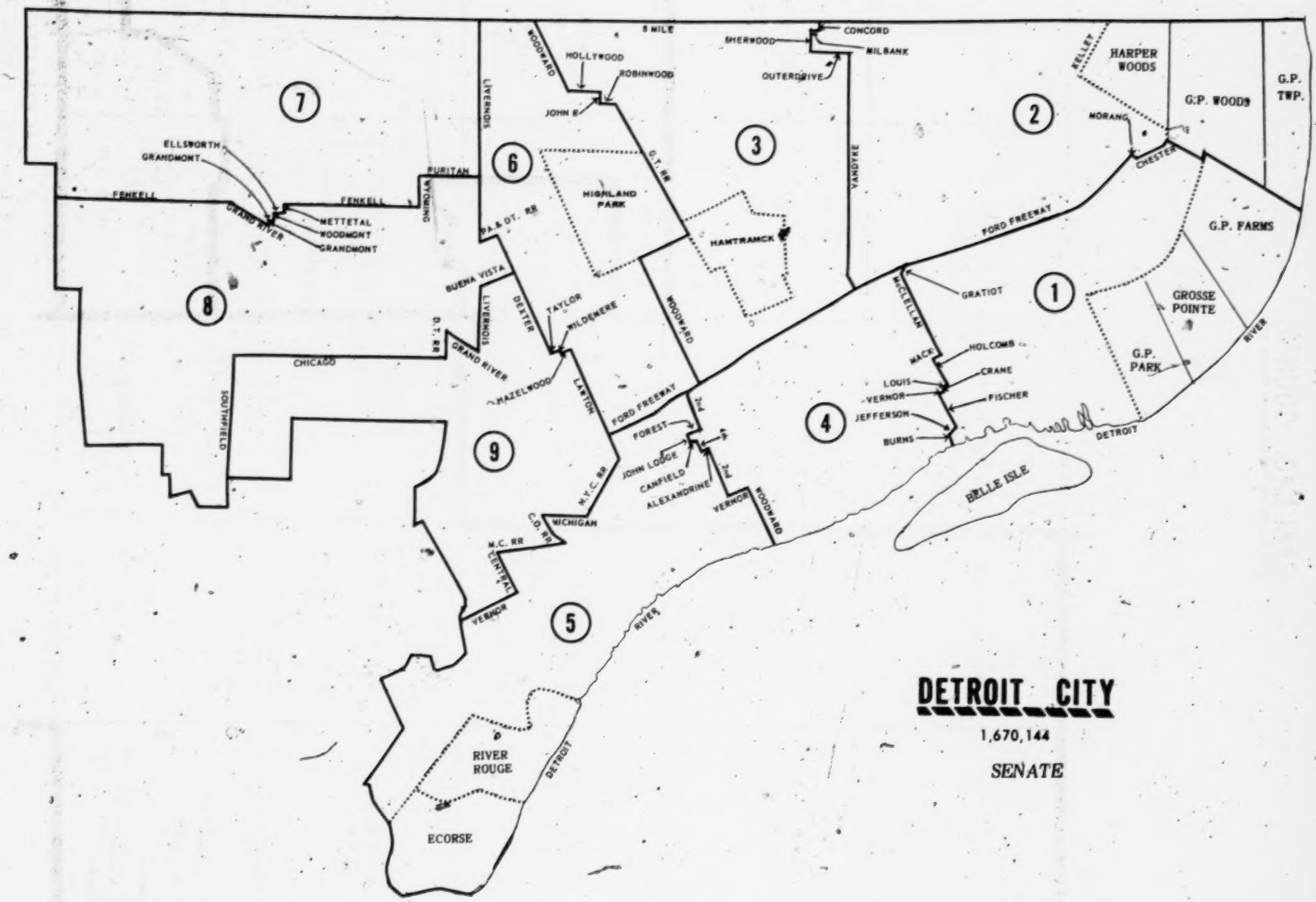
11 (Pt.)
11 (Pt.)
GIBRALTAR
+ Monroe Co.
WAYNE COUNTY
2,666,739
SENATE



DETROIT CITY

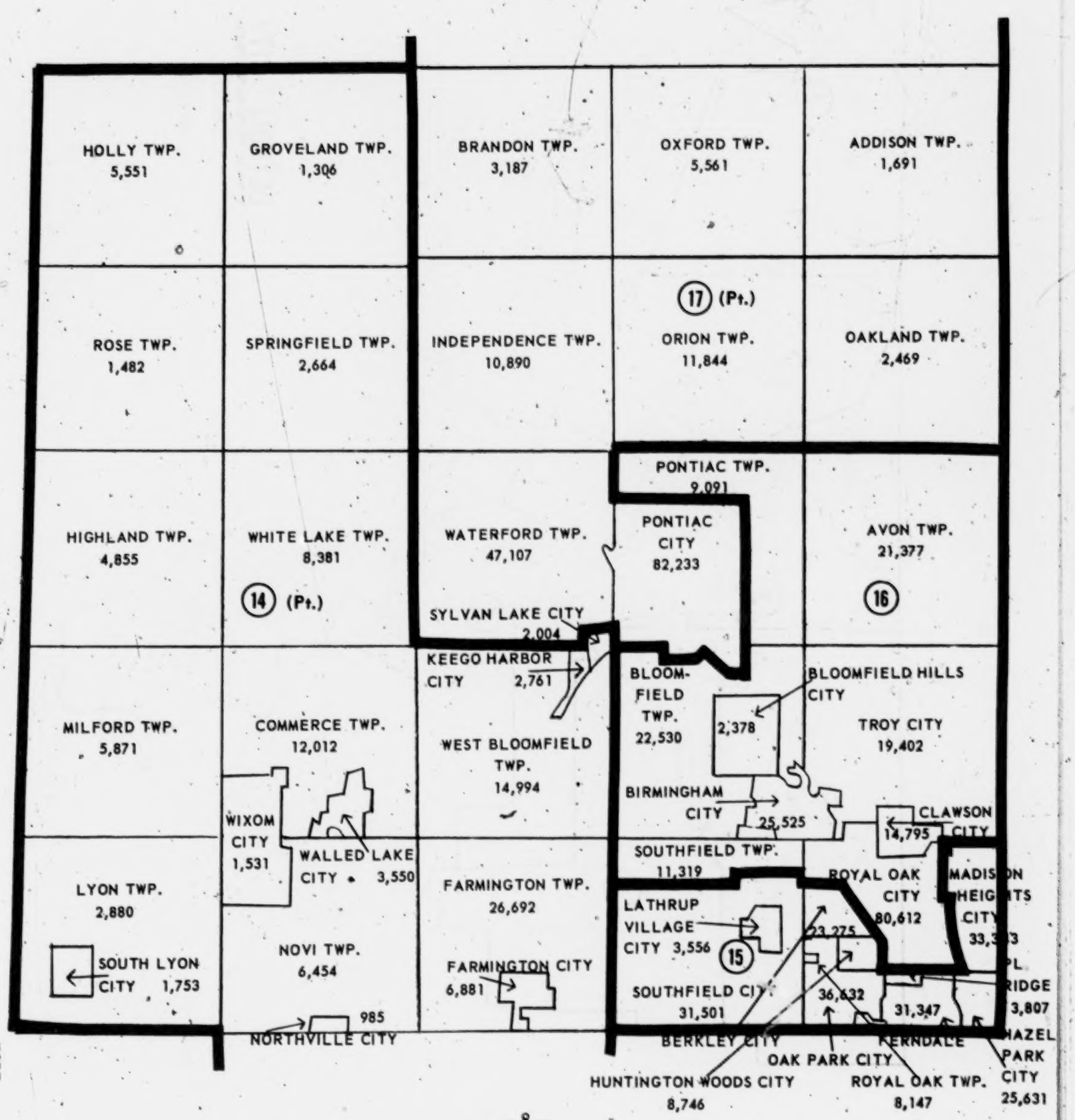
1,670,144

SENATE

OAKLAND COUNTY

690,603

SENATE



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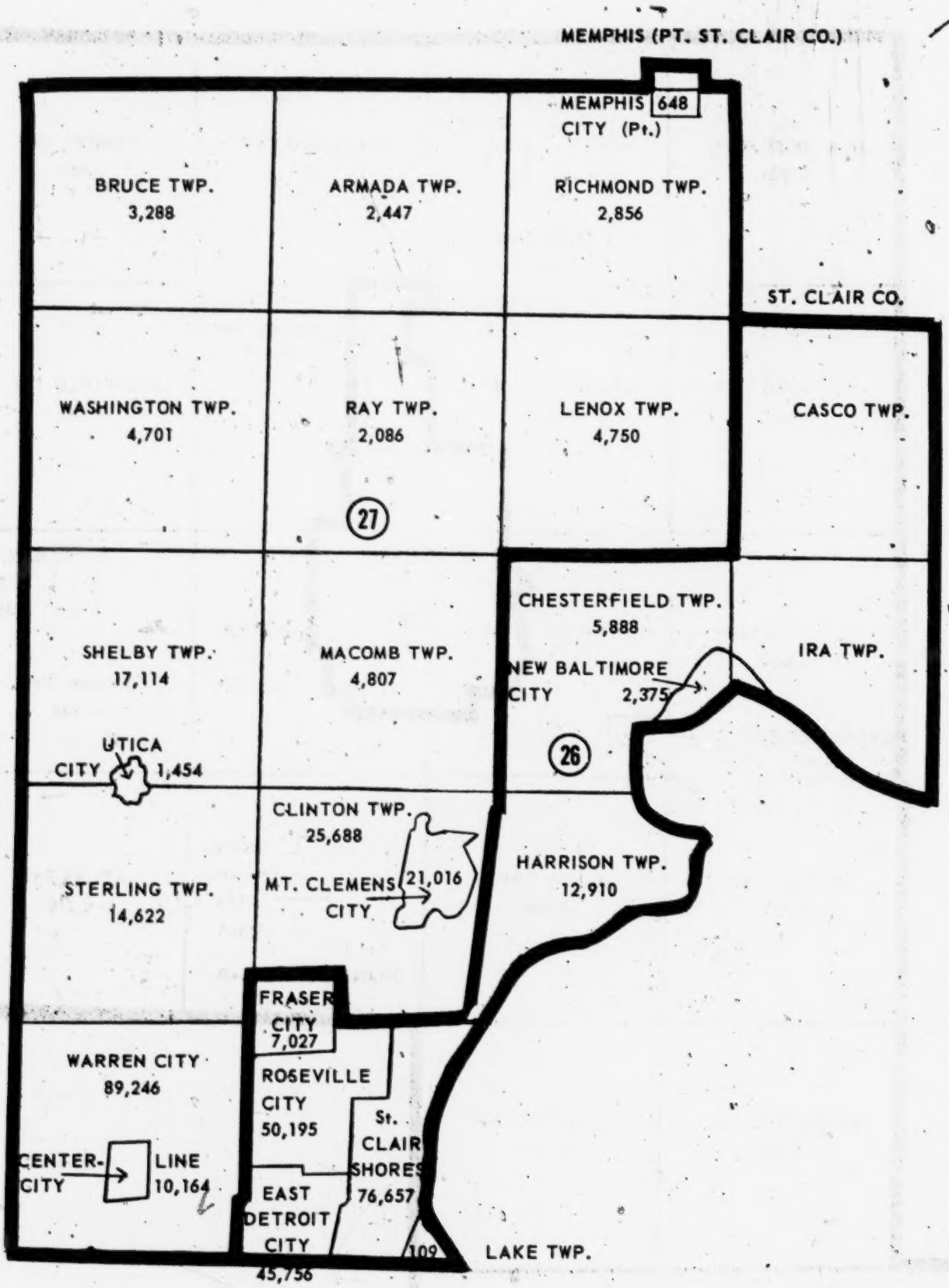
MACOMB COUNTY

405,804

SENATE



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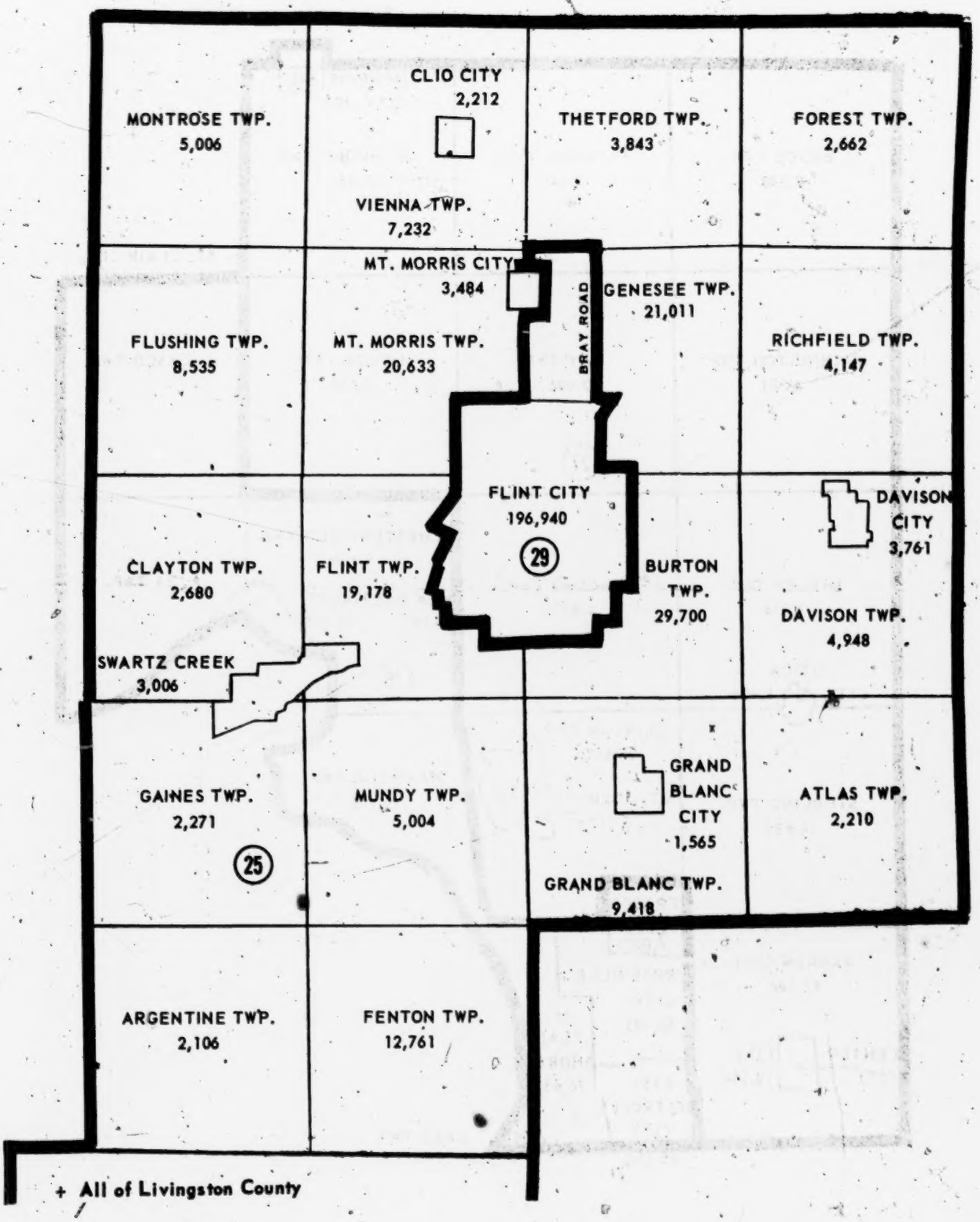
GENESEE COUNTY

374,313

SENATE



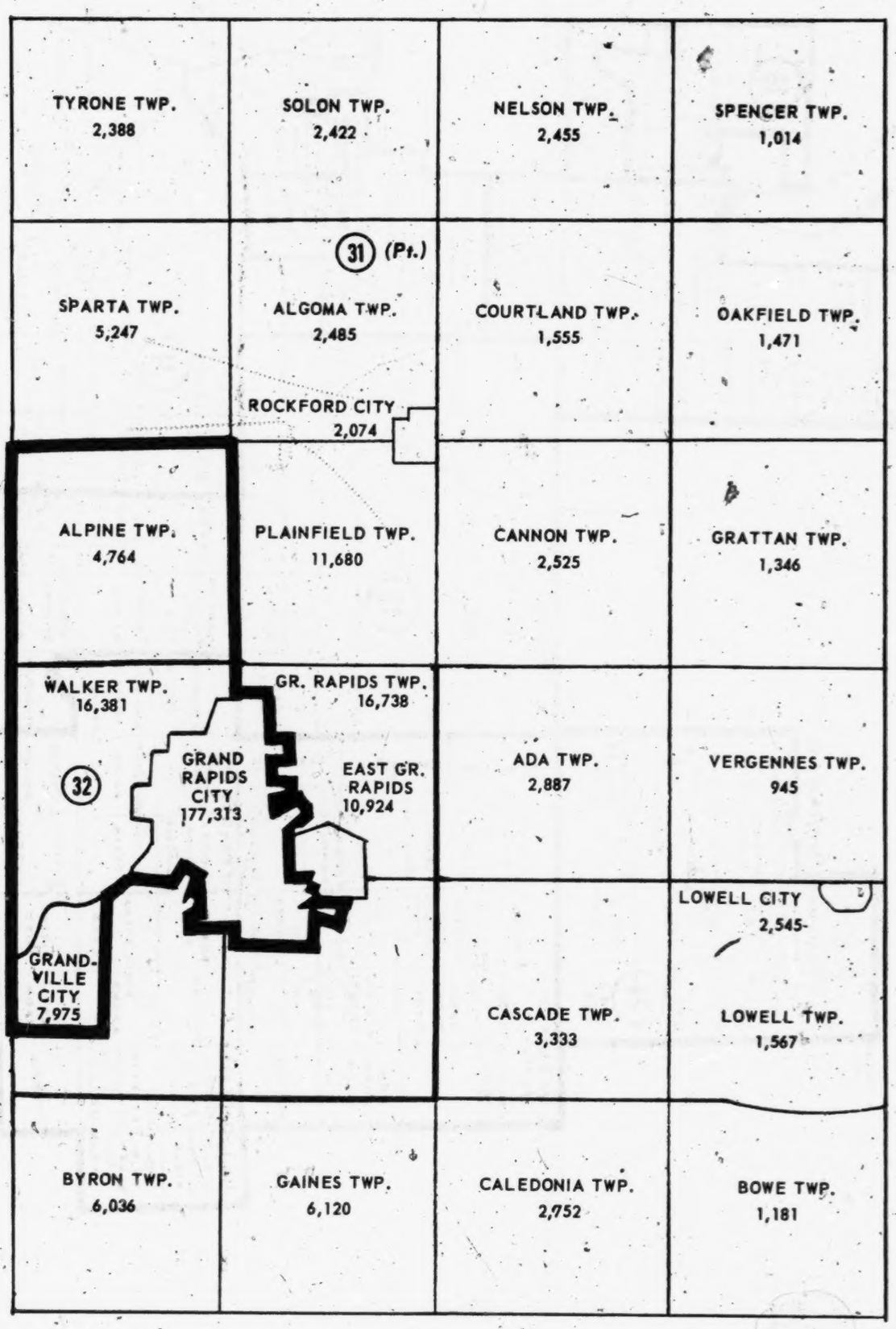
142a

+ All of Livingston County

KENT COUNTY

363,187

SENATE



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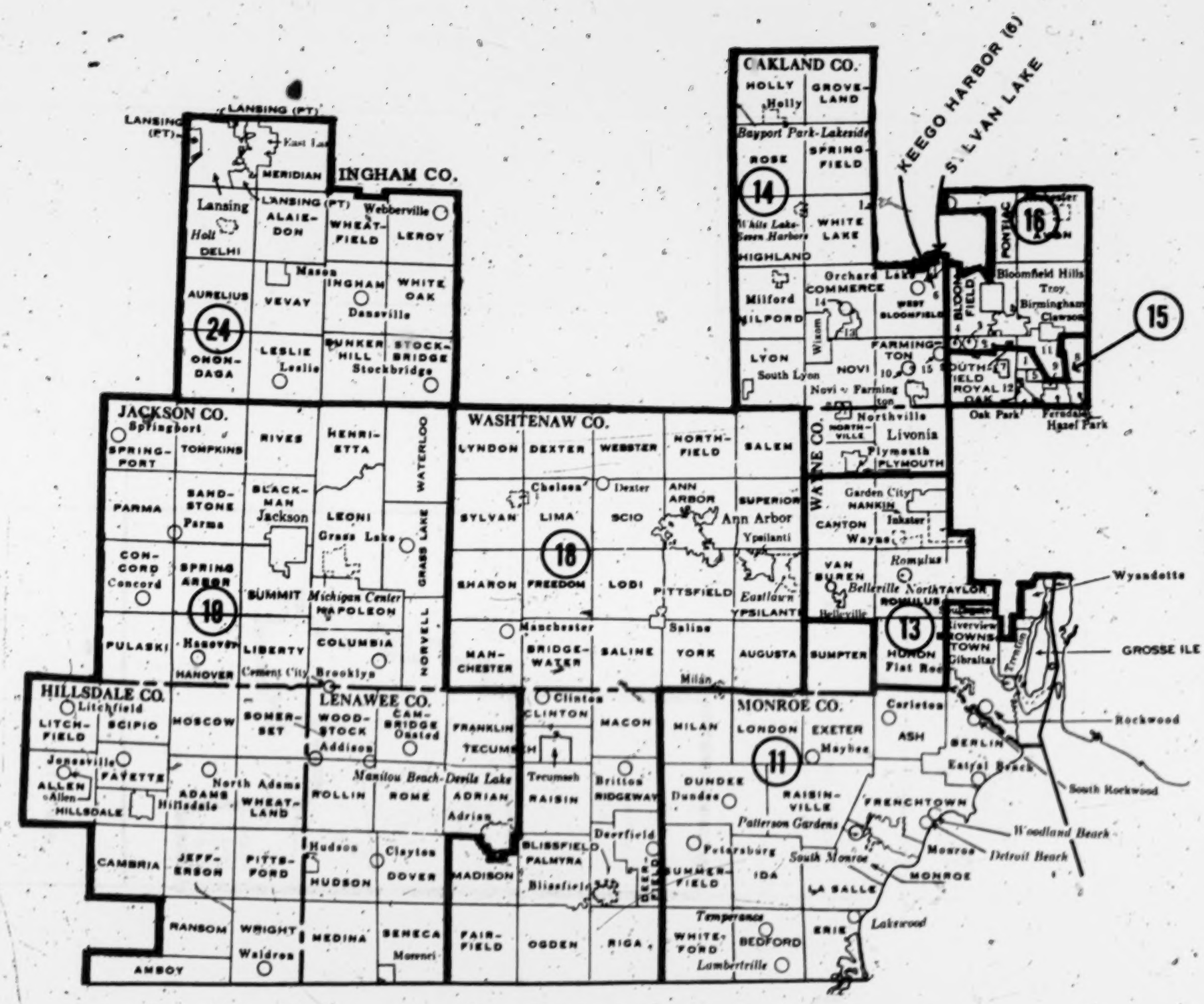
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Lansing
Holt
DELHI
MERIDIAN
LANSING (PT)
ALAIEDON
WHEATFIELD
Webberville
LEROY
AURELIUS
24
VEVAY
Mason
INGHAM
Dansville
WHITE OAK
ONONDAGA
LESLIE
Leslie
BUNKER HILL
Stockbridge
STOCKBRIDGE
JACKSON CO.
Springport
SPRINGPORT
TOMPKINS
RIVES
HENRIETTA
WATERLOO
PARMA
SANDSTONE
Parma
BLACKMAN
Jackson
LEONI
Grass Lake
GRASS LAKE
CONCORD
Concord
SPRING ARBOR
10
SUMMIT
Michigan Center
NAPOLEON
PULASKI
Hanover
HANOVER
LIBERTY
Cement City
Brooklyn
COLUMBIA
NORVELL
HILLSDALE CO.
Litchfield
LITCHFIELD
SCIPIO
MOSCOW
SOMERSET
LENAWEE CO.
WOODSTOCK
Addison
CAMBRIDGE
Onsted
Jonesville
ALLEN
Allen
FAYETTE
ADAMS
Hillsdale
HILLSDALE
North Adams
WHEATLAND
Manitou Beach-Devils Lake
ROLLIN
ROME
ADRIAN
Adrian
CAMBRIA
JEFFERSON
PITTSFORD
Hudson
Clayton
HUDSON
DOVER
MADISON
RANSOM
WRIGHT
Waldron
MEDINA
SENECA
Monroe
AMBOY
WASHTENAW CO.
LYNDON
DEXTER
WEBSTER
NORTHFIELD
SALEM
Chelsea
Dexter
ANN ARBOR
SUPERIOR
SYLVAN
LIMA
SCIO
Ann Arbor
Ypsilanti
18
SHARON
FREEDOM
LODI
PITTSFIELD
Eastlawn
YPSILANTI
Manchester
MANCHESTER
BRIDGEWATER
SALINE
Saline
YORK
AUGUSTA
Milan
Clinton
CLINTON
MACON
Tecumseh
RAISIN
Britton
RIDGEWAY
Deerfield
BLISSFIELD
PALMYRA
Blissfield
DEERFIELD
FRANKLIN
TECUMSEH
FAIRFIELD
OGDEN
RIGA
OAKLAND CO.
HOLLY
Holly
GROVELAND
Bayport Park-Lakeside
ROSE
14
SPRINGFIELD
White Lake-Seven Harbors
WHITE LAKE
HIGHLAND
Milford
MILFORD
Orchard Lake
COMMERCE
WEST BLOOMFIELD
Wixom
LYON
South Lyon
NOVI
FARMINGTON
Novi
Farmington
WAYNE CO.
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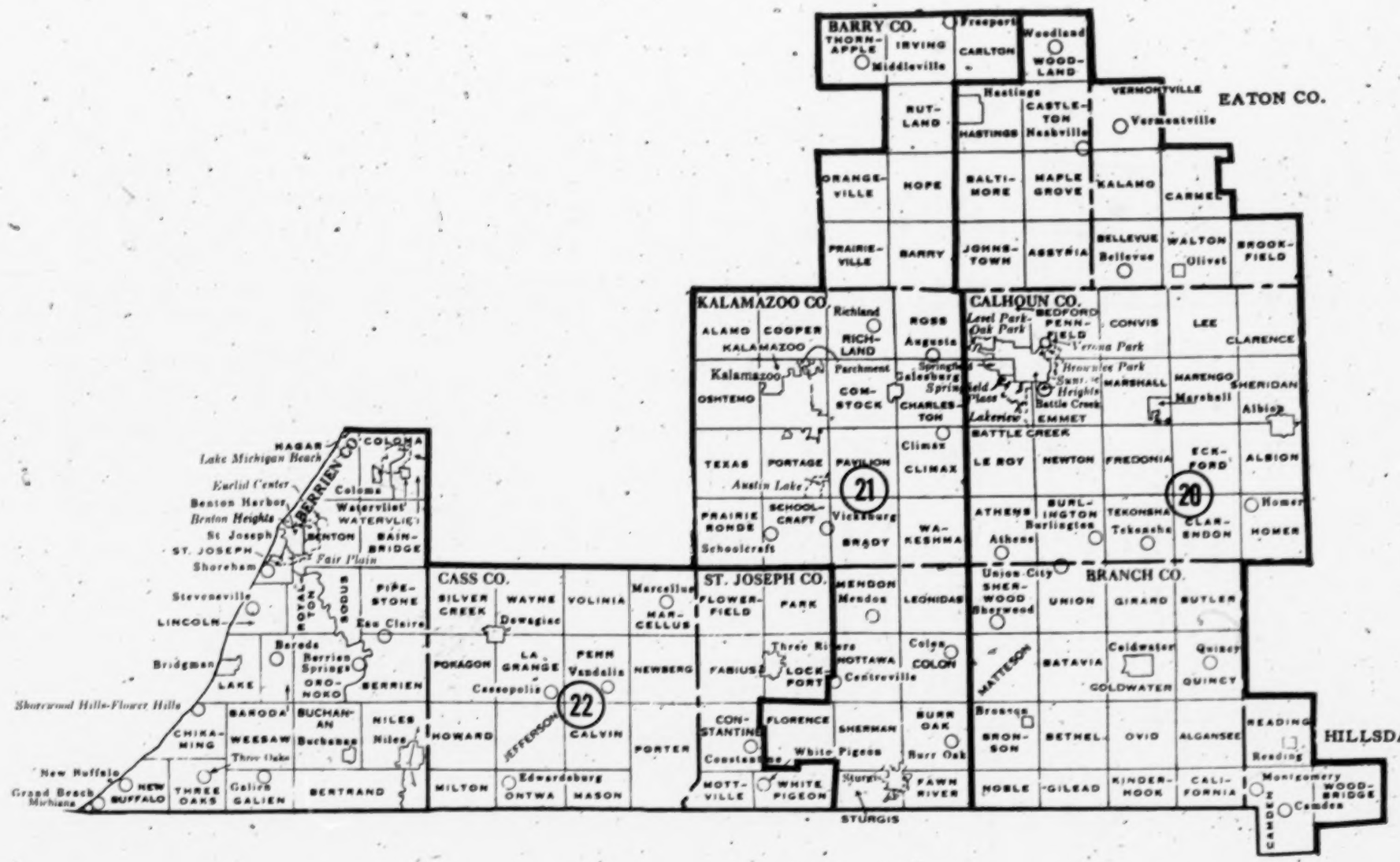
Northville
Livonia
Plymouth
PLYMOUTH
Garden City
HANKIN
CANTON
Inkster
Wayne
VAN BUREN
Belleville
Romulus
North TAYLOR
ROMULUS
13
HURON
Flat Rock
SUMPTER
MILAN
MONROE CO.
LONDON
EXETER
Maybee
11
DUNDEE
Dundee
RAISINVILLE
Petersburg
IDA
SUMMERFIELD
Patterson Gardens
South Monroe
LA SALLE
Temperance
WHITEFORD
BEDFORD
Lambertville
ERIE
Carleton
ASH
BERLIN
Estral Beach
FRENCHTOWN
Monroe
MONROE
Woodland Beach
Detroit Beach
Lakewood
South Rockwood
Rockwood
Trenton
Riverview
Gibraltar
Wyandotte
GROSSE ILE
KEEGO HARBOR (6)
S. LYON LAKE
16
PONTIAC
Bloomfield Hills
Troy
Birmingham
Clawson
BLOOMFIELD
SOUTHFIELD
ROYAL OAK
Oak Park
Ferndale
Hazel Park
15

SENATE MAP A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CASS CO.
ST. JOSEPH CO.
BERRIEN CO.
Freeport
Woodland
Hastings
Vermontville
Nashville
Richland
Kalamazoo
Parchment
Galesburg
Augusta
Springfield
Battle Creek
Marshall
Albion
Homer
Athens
Union City
Sherwood
Coldwater
Quincy
Colon
Centreville
Three Rivers
Constantine
Sturgis
White Pigeon
Burr Oak
Bronson
Reading
Montgomery
Camden
Woodbridge
Climax
Vicksburg
Schoolcraft
Mendon
Leonidas
Fabius
Florence
Sherman
Hagar
Coloma
Watervliet
Benton Harbor
Benton Heights
St Joseph
Shoreham
Fair Plain
Stevensville
Lincoln
Bridgman
Lake
Shorewood Hills-Flower Hills
New Buffalo
Grand Beach
Michiana
New Buffalo
Three Oaks
Galien
Bertrand
Chikaming
Weesaw
Baroda
Buchanan
Niles
Berrien Springs
Oronoko
Eau Claire
Pipestone
Silver Creek
Wayne
Dowagiac
Volinia
Pokagon
La Grange
Penn
Vandalia
Howard
Jefferson
Calvin
Milton
Edwardsburg
Ontwa
Mason
Newberg
Porter
Marcellus
Mottville
Fawn River
Noble
Gilead
Kinderhook
California
Batavia
Bethel
Ovid
Algansee
Matteson
Bellevue
Olivet
Walton
Brookfield
Carmel
Clarence
Sheridan
Eckford
Fredonia
Newton
Le Roy
Convis
Lee
Marengo
Pennfield
Level Park-Oak Park
Verona Park
Brownlee Park
Battle Creek
Emmet
Lakeview
Athens
Tekonsha
Clarendon
Homer
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Marshall
Union
Girard
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Orchard
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Assyria
Bellevue
Walton
Brookfield
Olivet
Richland
Ross
Augusta
Springfield
Galesburg
Kalamazoo
Oshtemo
Comstock
Charleston
Climax
Texas
Portage
Pavilion
Austin Lake
Prairie Ronde
Schoolcraft
Vicksburg
Brady
Wakeshma
Le Roy
Newton
Fredonia
Eckford
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Burr Oak
Colon
Centreville
Mottville
White Pigeon
Constantine
Florence
Sherman
Mendon
Leonidas
Fabius
Three Rivers
Lockport
Flowerfield
Park
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Newberg
Porter
Howard
Jefferson
Calvin
Milton
Edwardsburg
Ontwa
Mason
Pokagon
La Grange
Penn
Vandalia
Silver Creek
Wayne
Dowagiac
Volinia
Pipestone
Eau Claire
Berrien Springs
Oronoko
Berrien
Baroda
Buchanan
Niles
Weesaw
Three Oaks
Galien
Bertrand
Chikaming
New Buffalo
Grand Beach
Michiana
New Buffalo
Shorewood Hills-Flower Hills
Lincoln
Stevensville
Bridgman
Lake
Shoreham
St. Joseph
Benton Harbor
Benton Heights
Hagar
Lake Michigan Beach
Euclid Center
Coloma
Watervliet
Benton
Bainbridge
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Eau Claire
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Oronoko
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Buchanan
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Three Oaks
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Euclid Center
Coloma
Watervliet
Benton
Bainbridge
Fair Plain
Orangeville
Hope
Baltimore
Maple Grove
Kalamo
Carmel
Prairieville
Barry
Johnstown
Assyria
Bellevue
Walton
Brookfield
Olivet
Richland
Ross
Augusta
Springfield
Galesburg
Kalamazoo
Oshtemo
Parchment
Comstock
Charleston
Climax
Texas
Portage
Pavilion
Austin Lake
Prairie Ronde
Schoolcraft
Vicksburg
Brady
Wakeshma
Bedford
Pennfield
Level Park-Oak Park
Verona Park
Brownlee Park
Battle Creek
Emmet
Lakeview
Convis
Lee
Clarence
Marengo
Marshall
Sheridan
Albion
Le Roy
Newton
Fredonia
Eckford
Albion
Athens
Burlington
Burlington
Tekonsha
Clarendon
Homer
Union City
Sherwood
Sherwood
Union
Girard
Butler
Coldwater
Quincy
Matteson
Bronson
Bethel
Ovid
Algansee
Reading
Gilead
Kinderhook
California
Noble
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Mottville
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Shorewood Hills-Flower Hills
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St. Joseph
Benton Harbor
Benton Heights
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Euclid Center
Coloma
Watervliet
Benton
Bainbridge
Fair Plain
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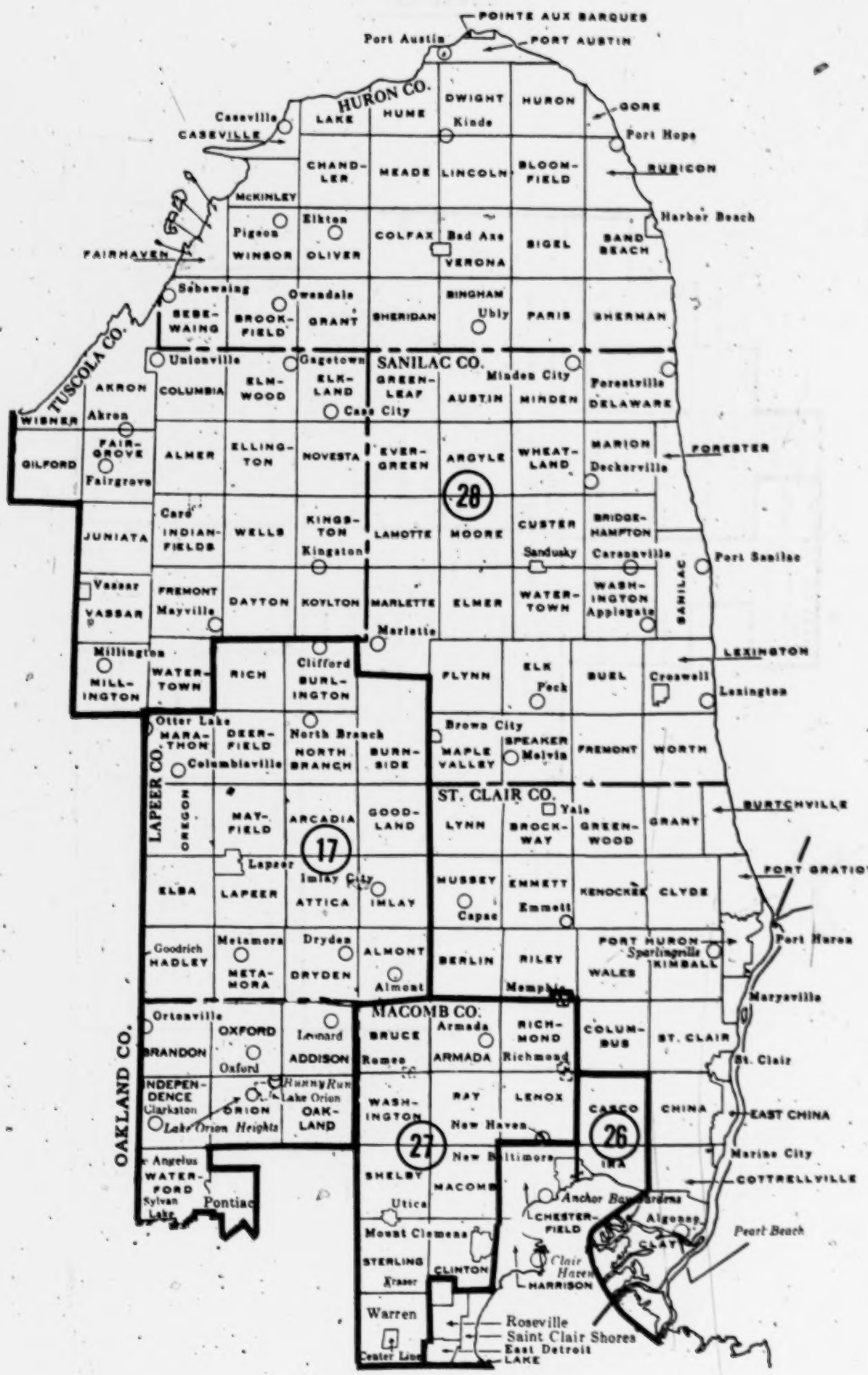
145a

SENATE MAP C


POINTE AUX BARQUES
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PORT AUSTIN
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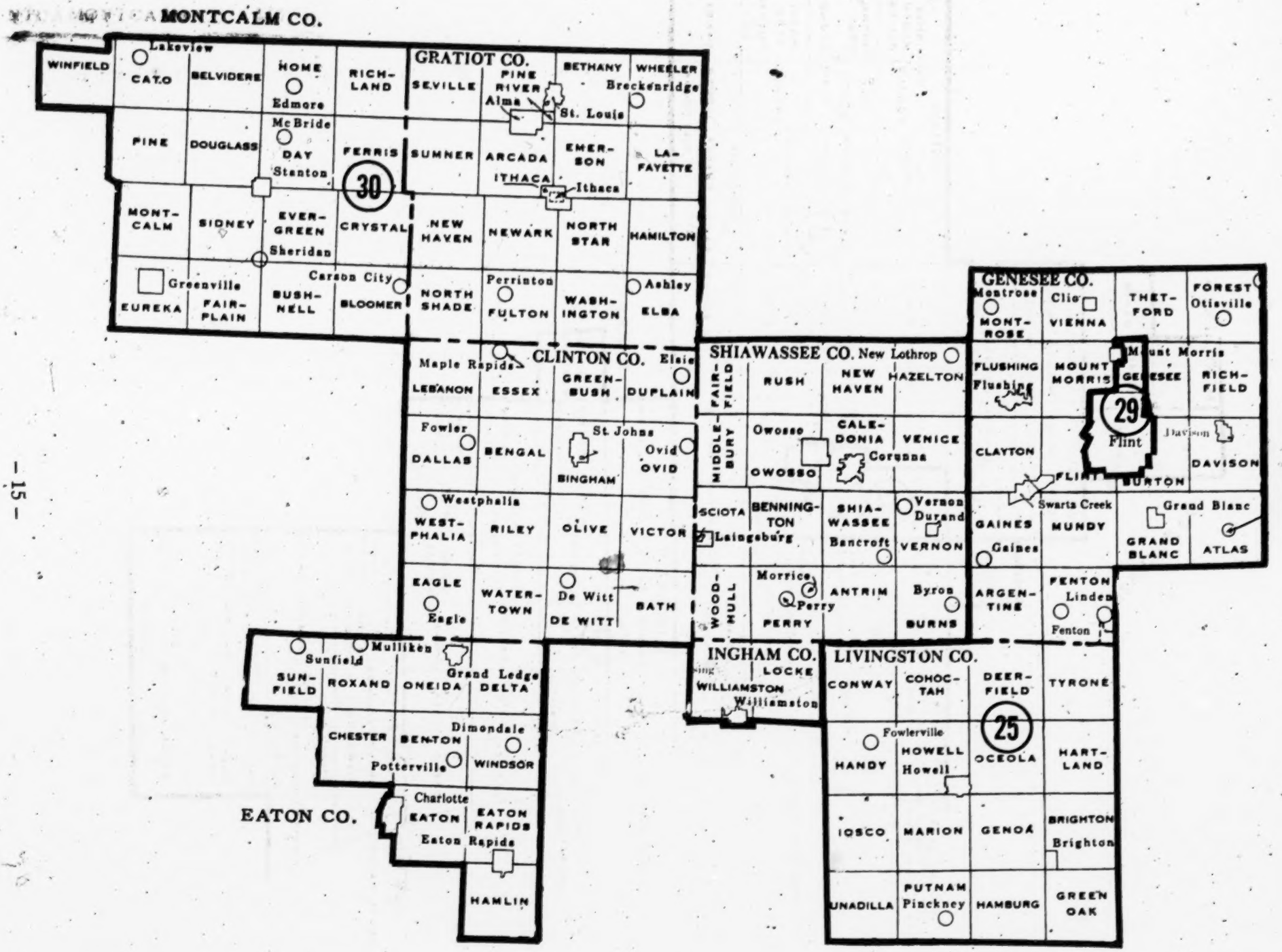
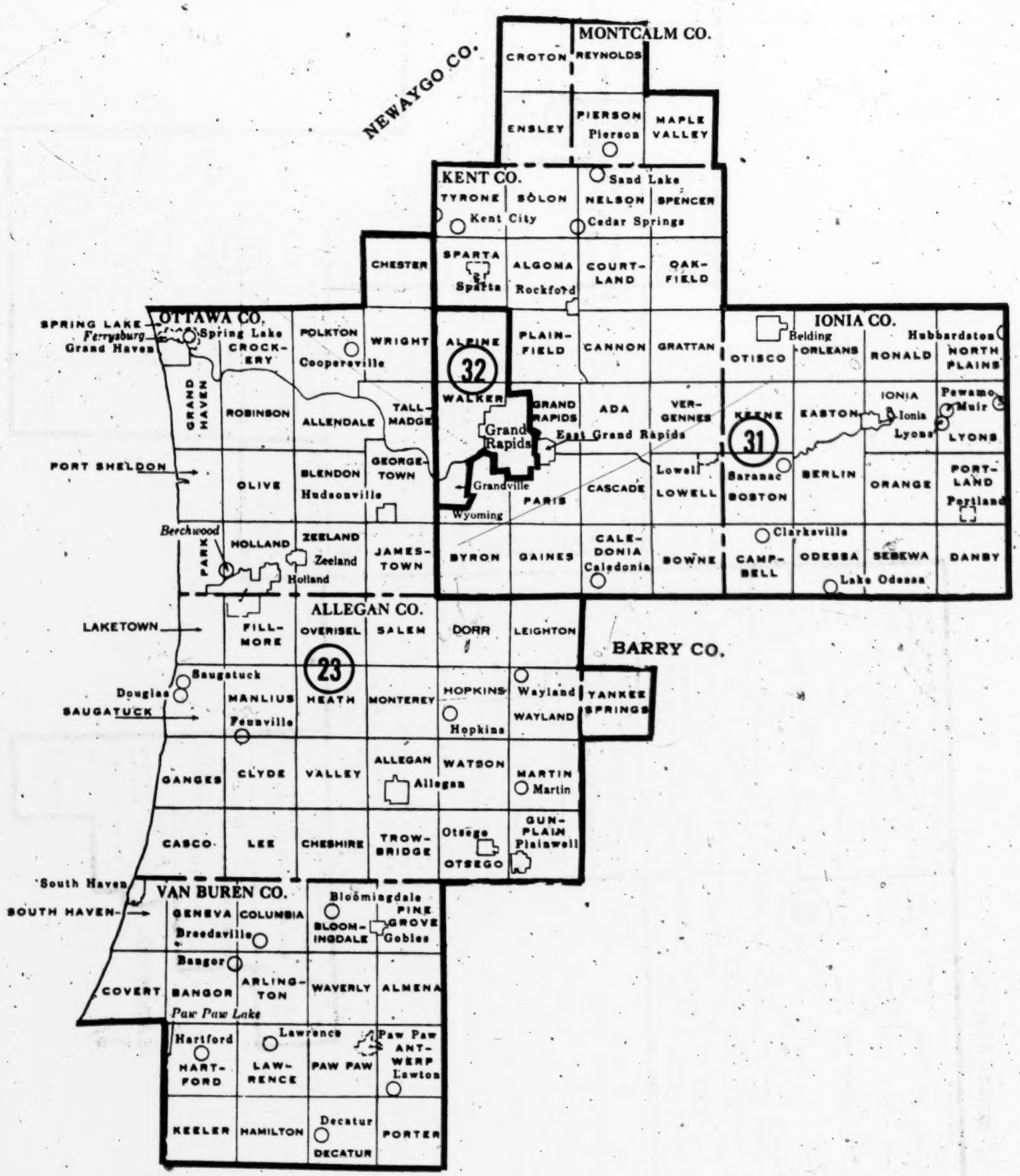
LAKE
HUME
DWIGHT
Kinde
HURON
GORE
Caseville
CASEVILLE
Port Hope
CHAND-LER
MEADE
LINCOLN
BLOOM-FIELD
RUBICON
McKINLEY
Harbor Beach
Pigeon
WINSOR
Elkton
OLIVER
COLFAX
Bad Axe
VERONA
SIGEL
SAND BEACH
FAIRHAVEN
Sebewaing
SEBE-WAING
Owendale
BROOK-FIELD
GRANT
SHERIDAN
BINGHAM
Ubly
PARIS
SHERMAN
TUSCOLA CO.
Unionville
Gagetown
SANILAC CO.
Minden City
Forestville
AKRON
COLUMBIA
ELM-WOOD
ELK-LAND
GREEN-LEAF
AUSTIN
MINDEN
DELAWARE
WISNER
Akron
Cass City
FAIR-GROVE
ALMER
ELLING-TON
NOVESTA
EVER-GREEN
ARGYLE
WHEAT-LAND
MARION
FORESTER
GILFORD
Fairgrove
Deckerville
28
Carō
JUNIATA
INDIAN-FIELDS
WELLS
KINGS-TON
Kingston
LAMOTTE
MOORE
CUSTER
Sandusky
BRIDGE-HAMPTON
Carsonville
Port Sanilac
Vassar
VASSAR
FREMONT
Mayville
DAYTON
KOYLTON
MARLETTE
Marlette
ELMER
WATER-TOWN
WASH-INGTON
Applegate
SANILAC
Millington
MILL-INGTON
WATER-TOWN
RICH
Clifford
BURL-INGTON
FLYNN
ELK
Peck
BUEL
LEXINGTON
Croswell
Lexington
Otter Lake
Brown City
MARA-THON
DEER-FIELD
North Branch
NORTH BRANCH
BURN-SIDE
MAPLE VALLEY
SPEAKER
Melvin
FREMONT
WORTH
Columbiaville
LAPEER CO.
OREGON
ST. CLAIR CO.
Yale
BURTCHVILLE
MAY-FIELD
ARCADIA
17
GOOD-LAND
LYNN
BROCK-WAY
GREEN-WOOD
GRANT
Lapeer
FORT GRATIOT
ELBA
LAPEER
Imlay City
ATTICA
IMLAY
MUSSEY
EMMETT
KENOCKEE
CLYDE
Capac
Emmett
Goodrich
HADLEY
Metamora
META-MORA
Dryden
DRYDEN
ALMONT
Almont
BERLIN
RILEY
Memphis
PORT HURON
Sparlingville
KIMBALL
WALES
Port Huron
Marysville
MACOMB CO.
Ortonville
OXFORD
Leonard
Armada
BRUCE
RICH-MOND
COLUM-BUS
ST. CLAIR
St. Clair
OAKLAND CO.
BRANDON
Oxford
ADDISON
ARMADA
Romeo
Richmond
INDEPEN-DENCE
Clarkston
Rainey Run
Lake Orion
ORION
OAK-LAND
WASH-INGTON
RAY
LENOX
CASCO
CHINA
EAST CHINA
Lake Orion Heights
New Haven
27
26
Marine City
Angelus
WATER-FORD
Sylvan Lake
Pontiac
SHELBY
New Baltimore
IRA
COTTRELLVILLE
MACOMB
Anchor Bay Marina
Utica
CHESTER-FIELD
Algonac
Pearl Beach
Mount Clemens
STERLING
Fraser
CLINTON
Clair Haven
HARRISON
Warren
Roseville
Saint Clair Shores
East Detroit
Center Line
LAKE


MONTCALM CO.
WINFIELD
Lakeview
CATO
BELVIDERE
HOME
Edmore
RICH-
LAND
GRATIOT CO.
SEVILLE
PINE
RIVER
Alma
BETHANY
Breckenridge
WHEELER
St. Louis
PINE
DOUGLASS
McBride
DAY
Stanton
FERRIS
30
SUMNER
ARCADA
ITHACA
Ithaca
EMER-
SON
LA-
FAYETTE
MONT-
CALM
SIDNEY
EVER-
GREEN
Sheridan
CRYSTAL
NEW
HAVEN
NEWARK
NORTH
STAR
HAMILTON
Greenville
EUREKA
FAIR-
PLAIN
Carson City
BUSH-
NELL
BLOOMER
NORTH
SHADE
Perrinton
FULTON
WASH-
INGTON
Ashley
ELBA
CLINTON CO.
Maple Rapids
LEBANON
ESSEX
GREEN-
BUSH
Elsie
DUPLAIN
SHIAWASSEE CO.
New Lothrop
FAIR-
FIELD
RUSH
NEW
HAVEN
HAZELTON
Fowler
DALLAS
BENGAL
St. Johns
BINGHAM
Ovid
OVID
MIDDLE-
BURY
Owosso
OWOSSO
CALE-
DONIA
Corunna
VENICE
Westphalia
WEST-
PHALIA
RILEY
OLIVE
VICTOR
SCIOTA
Laingsburg
BENNING-
TON
SHIA-
WASSEE
Bancroft
Vernon
Durand
VERNON
EAGLE
Eagle
WATER-
TOWN
De Witt
DE WITT
BATH
WOOD-
HULL
Morrice
Perry
PERRY
ANTRIM
Byron
BURNS
Sunfield
SUN-
FIELD
Mulliken
ROXAND
Grand Ledge
ONEIDA
DELTA
INGHAM CO.
LOCKE
WILLIAMSTON
Williamston
LIVINGSTON CO.
CONWAY
COHOC-
TAH
DEER-
FIELD
TYRONE
CHESTER
BENTON
Dimondale
Potterville
WINDSOR
Fowlerville
HANDY
HOWELL
Howell
25
OCEOLA
HART-
LAND
EATON CO.
Charlotte
EATON
EATON
RAPIDS
Eaton Rapids
IOSCO
MARION
GENOA
BRIGHTON
Brighton
HAMLIN
UNADILLA
PUTNAM
Pinckney
HAMBURG
GREEN
OAK
GENESEE CO.
Montrose
MONT-
ROSE
Clio
VIENNA
THET-
FORD
FOREST
Otisville
FLUSHING
Flushing
MOUNT
MORRIS
Mount Morris
GENESEE
RICH-
FIELD
29
Flint
CLAYTON
FLINT
Davison
DAVISON
BURTON
GAINES
Gaines
Swarts Creek
MUNDY
Grand Blanc
GRAND
BLANC
ATLAS
ARGEN-
TINE
FENTON
Linden
Fenton

1478

SENATE MAP E



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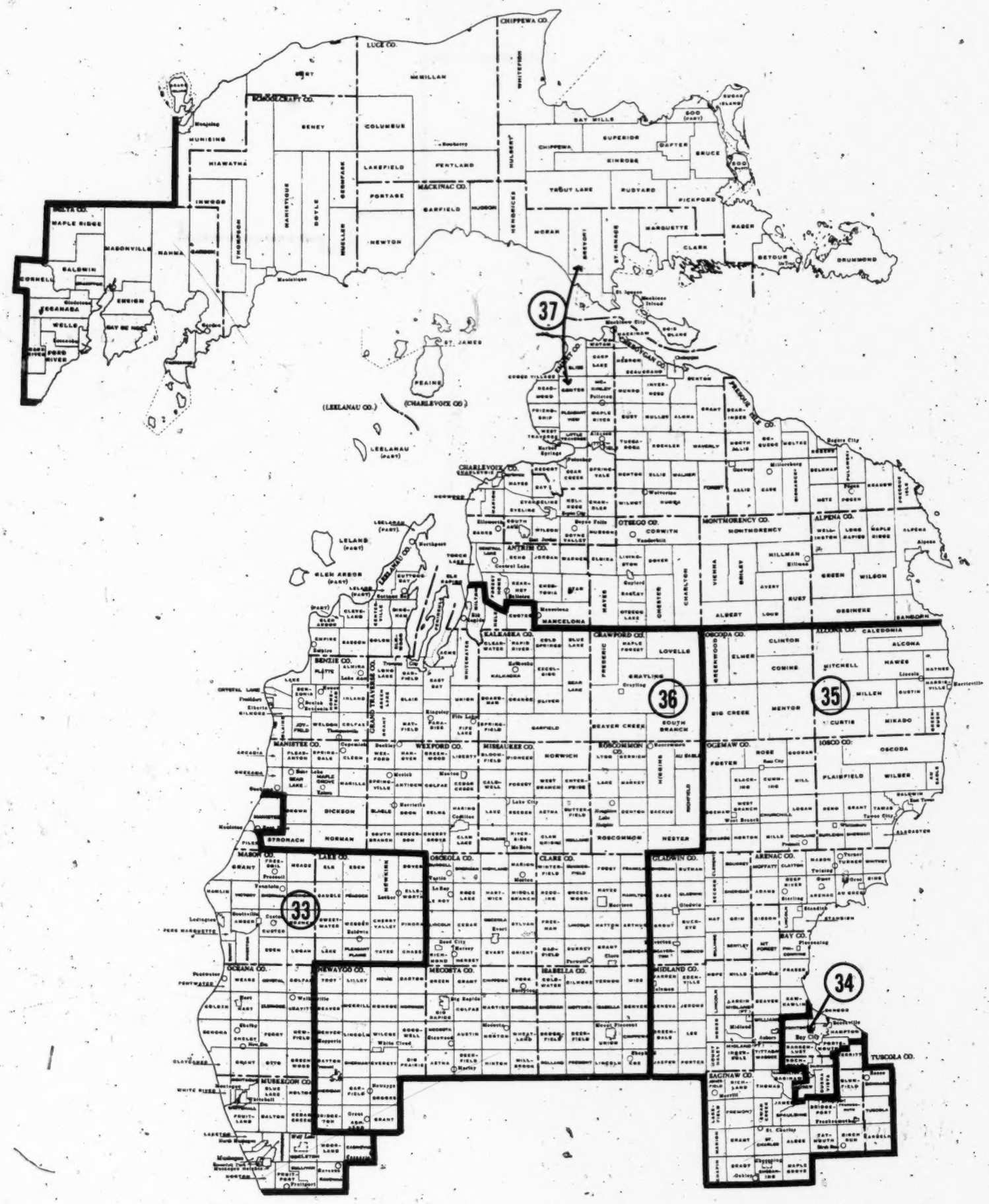
SENATE MAP F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LUCE CO.
MACKINAC CO.
ALGER CO.
SCHOOLCRAFT CO.
DELTA CO.
MENOMINEE CO.
DICKINSON CO.
GOGEBIC CO.
ONTONAGON CO.
HOUGHTON CO.
BARAGA CO.
IRON CO.
KEWEENAW CO.
BAY MILLS
SUGAR ISLAND
SOO (PART)
SUPERIOR
DAFTER
BRUCE
EMMONS
TRAUT LAKE
RUDYARD
PICKFORD
MARQUETTE
RADER
CLARK
BETOUR
DRUMMOND
MUNISING
MIAWATHA
INWOOD
THOMPSON
MARKETTE
BOYLE
GEORGEAN
MUELLER
SENEY
COLUMBUS
LAKEFIELD
PENTLAND
PORTAGE
GARFIELD
NEWTON
HUDSON
HENDRICKS
HULBERT
WHITEFISH
MCMILLAN
MORAN
BREVORT
ST. IGNACE
MACKINAC ISLAND
MACKINAW CITY
BOIS BLANC
ST. JAMES
PEAINE
(LEELANAU CO.)
(CHARLEVOIX CO.)
LEELANAU (PART)
CHEBOYGAN CO.
EMMET CO.
CHARLEVOIX CO.
OTSEGO CO.
MONTMORENCY CO.
ALPENA CO.
ANTRIM CO.
KALKASKA CO.
CRAWFORD CO.
OSCODA CO.
ALCONA CO.
CALEDONIA
BENZIE CO.
GRAND TRAVERSE CO.
MANISTEE CO.
WEXFORD CO.
MISSAUKEE CO.
ROSCOMMON CO.
OGEMAW CO.
IOSCO CO.
LAKE CO.
OSCEOLA CO.
CLARE CO.
GLADWIN CO.
ARENAC CO.
MASON CO.
NEWAYGO CO.
MECOSTA CO.
ISABELLA CO.
MIDLAND CO.
BAY CO.
OCEANA CO.
MUSKEGON CO.
GLADWIN
TUSCOLA CO.
SAGINAW CO.
LELAND (PART)
GLEN ARBOR (PART)
TORCH LAKE
OLD MISSION
CHARLEVOIX
EAST JORDAN
ELLSWORTH
BOYNE FALLS
BOYNE CITY
PETOSKEY
HARBOR SPRINGS
WOLVERINE
INDIAN RIVER
MACKINAW CITY
ST. IGNACE
MANISTIQUE
GLADSTONE
ESCANABA
GWINN
MARQUETTE
NEGAUNEE
IRONWOOD
BESSEMER
HANCOCK
HOUGHTON
CALUMET
L'ANSE
BARAGA
IRON MOUNTAIN
IRON RIVER
CRYSTAL FALLS
NORWAY
MENOMINEE
ESCANABA
GLADSTONE
MANISTIQUE
SAULT STE. MARIE
CHEBOYGAN
PETOSKEY
TRAVERSE CITY
CADILLAC
BAY CITY
SAGINAW
MIDLAND
ALPENA
GAYLORD
GRAYLING
MANISTEE
LUDINGTON
LUDINGTON
BIG RAPIDS
REED CITY
MUSKEGON
GRAND HAVEN
HOLLAND
ZEELAND
ALLEGAN
PAW PAW
BENTON HARBOR
ST. JOSEPH
NILES
DOWAGIAC
CASSOPOLIS
ADRIAN
HILLSDALE
COLDWATER
CENTREVILLE
STURGIS
ONSTED
MANCHESTER
ANN ARBOR
YPSILANTI
MONROE
DETROIT
WAYNE
DEARBORN
TAYLOR
WYANDOTTE
ECORSE
LINCOLN PARK
ROMULUS
INKSTER
GARDEN CITY
LIVONIA
FARMINGTON
SOUTHFIELD
OAK PARK
FERNDALE
ROYAL OAK
MADISON HEIGHTS
WARREN
CENTERLINE
STERLING HEIGHTS
MOUNT CLEMENS
NEW BALTIMORE
ROMEO
RICHMOND
ARMADA
CHESTERFIELD
NEW HAVEN
UTICA
SHELBY
MACOMB
CLINTON
HARRISON
MOUNT CLEMENS
ROSEVILLE
EASTPOINTE
HAZEL PARK
FRASER
CLINTON TWP.
MOUNT PLEASANT
SAGINAW
BAY CITY
MIDLAND
ALPENA
GAYLORD
GRAYLING
CADILLAC
TRAVERSE CITY
PETOSKEY
CHEBOYGAN
SAULT STE. MARIE
MANISTIQUE
ESCANABA
MENOMINEE
IRON RIVER
CRYSTAL FALLS
IRONWOOD
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L'ANSE
BARAGA
IRON MOUNTAIN
NORWAY
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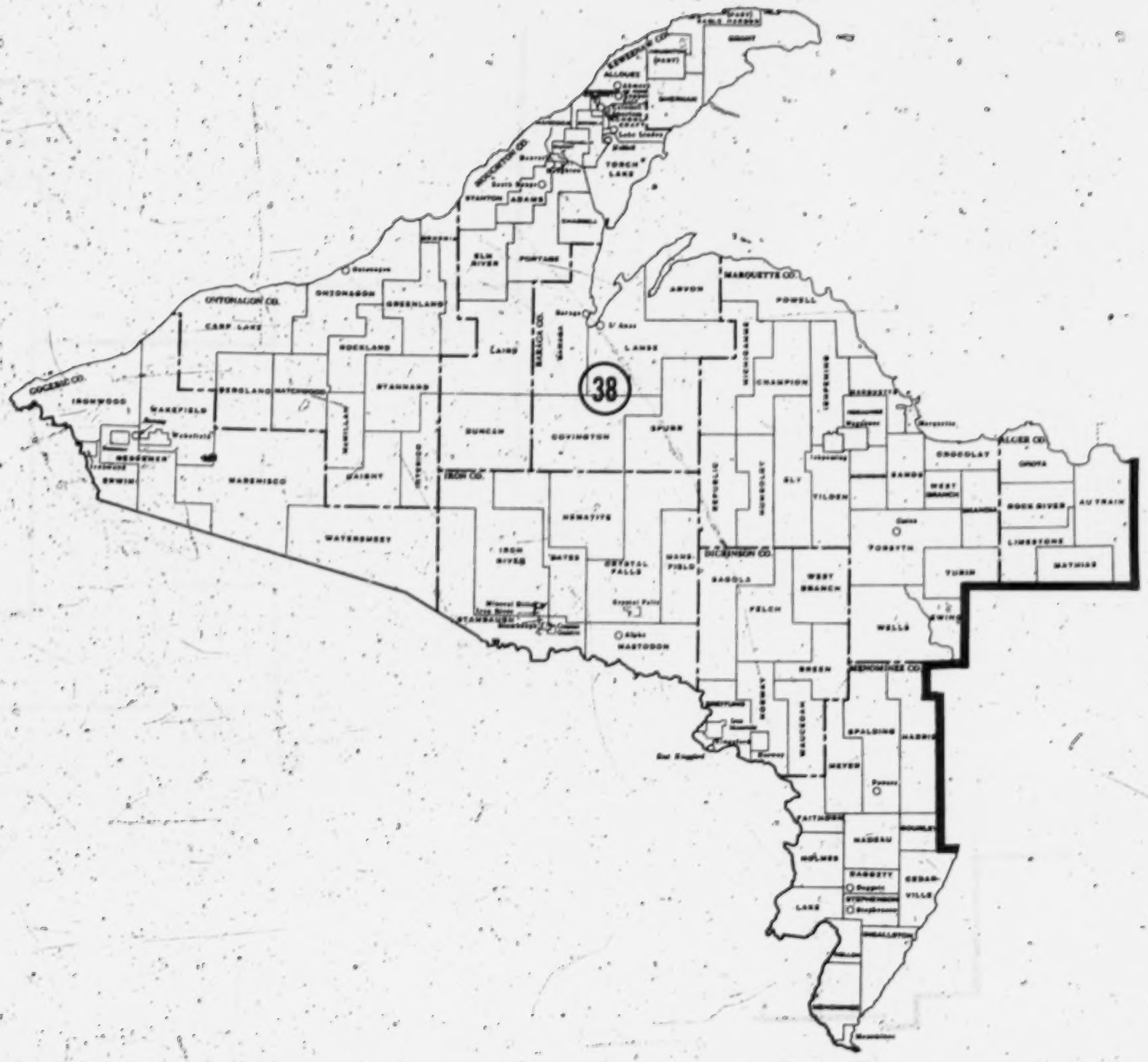
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ONTONAGON CO.
GOGEBIC CO.
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WAKEFIELD
BESSEMER
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MARENISCO
ONTONAGON
GREENLAND
CARP LAKE
ROCKLAND
STANNARD
BERGLAND
WHITE PINE
MARENISCO
BAIRNY
GAIRD
DUNCAN
COVINGTON
LANDS
ELM RIVER
PORTAGE
TORCH LAKE
HOUGHTON CO.
HANCOCK CO.
BARAGA CO.
IRON CO.
IRON RIVER
CRYSTAL FALLS
STAMBAUGH
HEMLOCK
WATERS
HEMATITE
SPURR
MAPLE RIDGE
MARQUETTE CO.
ARVON
POWELL
CHAMPION
REPUBLIC
MICHIGAMME
ELY
TILDEN
DICKINSON CO.
BAGLEY
FELCH
WEST BRANCH
MENOMINEE CO.
SPALDING
MEYER
FAITHORN
HOLMES
LAKE
CRYSTAL
CHOCOLAY
SANDS
WEST BRANCH
FORSYTH
TURIN
WELLS
ALGER CO.
ONOTA
ROCK RIVER
LIMESTONE
MATHIAS
AU TRAIN

SENATE MAP G

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PAGE

District Number — *Senate Description*

1. From Wayne County the cities of Grosse Pointe Farms, Grosse Pointe and Grosse Pointe Park, and that part of the City of Detroit starting at the east city limits and the Detroit River, west along the Detroit River to Burns Drive, north to Jefferson Avenue, east to Fischer, north to Vernor Highway, east to Crane, north to Louis, east to Holcomb, north to Mack Avenue, east to McClellan, north to Gratiot Avenue, northeast to Edsel Ford Expressway, east to Morang, south to Chester Avenue, east to Detroit city limits, south along city limits to Grosse Pointe Farms.

2. From Wayne County the cities of Harper Woods and Grosse Pointe Woods; Grosse Pointe Township and that part of the City of Detroit starting at 8 Mile Road and Kelly Avenue, west to Concord, south to Milbank, west to Sherwood, south to Outer Drive, east to Van Dyke, south to Edsel Ford Expressway, east to Morang, south to Chester Avenue and east to Detroit city limits.

3. That part of the City of Detroit (including the City of Hamtramck) starting at 8 Mile Road and Concord south to Milbank, west to Sherwood, south to Outer Drive, east to Van Dyke, south to Edsel Ford expressway, west to Woodward Avenue, north to southern boundary of the City of Highland Park, east to Grand Trunk Ry., north to Robinwood extended, west to John R., north to Hollywood, west to Woodward Avenue, north to 8 Mile Road and east on 8 Mile Road to Concord.

4. That part of the City of Detroit starting at the Detroit River and Burns Drive, north to Jefferson Avenue, east to Fisher, north to Vernor Highway, east to Crane, north to Louis, east to Holcomb, north to Mack Avenue, east to McClellan, north to Gratiot, northeast to Edsel Ford Expressway, west to Second Avenue, south to Forest Avenue, west to John Lodge Expressway, south to Canfield, east to Fourth, south

District Number	*Senate Description*

to Alexandrine, east to Second Avenue, south to Vernor Highway, east to Woodward Avenue, south to Detroit River, east along the Detroit River and including Belle Isle Park to Burns Drive.

5. That part of the City of Detroit and the Cities of River Rouge and Ecorse starting at Woodward Avenue and the Detroit River, south along the Detroit River to the south city limits of Ecorse, west and north along the Ecorse and Detroit city limits to the City of Melvindale, north and west along the Melvindale city limits to the City of Dearborn, east and north along the Dearborn city limits to Vernor Highway, east to Central Avenue, north to Michigan Central Railroad, east to Chesapeake and Ohio Railroad, north to Michigan Avenue, east to Michigan Central Railroad, north to Lawton Avenue, north to Edsel Ford Expressway, east to Second Avenue, south to Forest Avenue, west to John Lodge Expressway, south to Canfield, east to Fourth, south to Alexandrine, east to Second Avenue, south to Vernor Highway, east to Woodward Avenue, south to the Detroit River.

6. That part of the City of Detroit (including the City of Highland Park) starting at 8 Mile Road and Woodward Avenue, south to Hollywood, east to John R., south to Robinwood, east to Grand Trunk Railroad, south to southern boundary of the City of Highland Park, west to Woodward Avenue, south to Edsel Ford Expressway, west to Lawton, north to Hazelwood, west to Wildemere, north to Taylor, west to Dexter Blvd., north to PA. and DT. Railroad, west to Livernois Avenue, north to 8 Mile Road, east to Woodward Avenue.

7. That part of the City of Detroit starting at 8 Mile Road and Livernois Avenue, south to Puritan Avenue, west to Wyoming, south to Fenkel Avenue, west to Mettetal, south to Ellsworth Avenue, west to

District Number *Senate Description*

Woodmont south to Grandmont Avenue, west and south to Grand River, north and west to Fenkell Ave., west to Detroit city limits, north to 8 Mile Road, east to Livernois Avenue.

8. That part of the City of Detroit starting at Livernois Avenue and Puritan Avenue, west to Wyoming, south to Fenkell Avenue, west to Mettetal, south to Ellsworth Avenue, west to Woodmont, south to Grandmont Avenue, west and south to Grand River, north and west to Fenkell Avenue, west to Detroit city limits, south and east along Detroit city limits to Southfield Road, north to Chicago Avenue, east to D.T. Railroad, north to Grand River Avenue, east to Livernois Avenue, north to Buena Vista, east to Dexter Blvd., north to PA. & DT. Railroad, west to Livernois Avenue, and north to Puritan Avenue.

9. That part of the City of Detroit starting at Southfield Road and Paul Avenue, north to Chicago Avenue, east to D.T. Railroad, north to Grand River Avenue, east to Livernois Avenue, north to Buena Vista, east to Dexter Blvd., south to Taylor, east to Wildemere, south to Hazelwood, east to Lawton, south to New York Central Railroad, south to Michigan Avenue, west to Chesapeake and Ohio Railroad, south to Michigan Central Railroad, west to Central Avenue, south to Vernor Highway, west to Detroit city limits, north and west along Detroit city limits to Greenfield, south to Paul Avenue and west to Southfield Road.

10. From Wayne County the cities of Southgate, Allen Park, Lincoln Park and Melvindale, that part of the City of Dearborn lying east of a line starting at the north city limits and Greenfield Avenue, south to the Michigan Central Railroad, west to Southfield Road, south to Rouge River, and southeast along the Rouge River to the Allen Park city limits and that part of the City of Riverview lying west of Fort Street, and

District Number	*Senate Description*
	that portion of Taylor Township lying north of Wick Road and east of Telegraph Road.
11.	Monroe County and that part of Wayne County composed of the townships of Sumpter, Brownstown and Grosse Ile, the cities of Wyandotte, Gibralter and Trenton, that part of the City of Riverview lying east of Fort Street, and that part of Taylor Township lying south of Northline Road.
12.	From Wayne County the townships of Dearborn and Redford; that part of the City of Dearborn lying west of a line beginning at northern city limits and Greenfield, south on Greenfield to Michigan Central Railroad, west on Michigan Central Railroad to Southfield, south on Southfield to Rouge River and southeast along Rouge River to Allen Park city limits; and all of the City of Dearborn Heights except that portion contained within a line beginning at the southern city limits of the City of Dearborn and Telegraph Road, west to Beech-Daly, south on Beech-Daly Road to Annapolis, west on Annapolis to Inkster Road, south on Inkster Road to Van Born Road, east on Van Born Road to Telegraph, north on Telegraph to point of beginning.
13.	From Wayne County the townships of Huron, Van Buren, Romulus, Canton and Nankin, the cities of Belleville, Garden City and Wayne and that part of Taylor Township contained within a line beginning at Northline Road and Inkster Road, north on Inkster Road to Van Born, east on Van Born to Telegraph, south on Telegraph to Wick, east on Wick to Pelham, south on Pelham to Allen, south on Allen to Northline Road and west on Northline Road to point of beginning; and that part of the City of Dearborn Heights contained within a line beginning at southern City limits of Dearborn and Telegraph Road, west to Beech-Daly, south on Beech-Daly to Annapolis, west on Annapolis to Inkster Road, south on Inkster Road

District Number *Senate Description*

to Van Born Road, east on Van Born to Telegraph, north on Telegraph to point of beginning.

14. That part of Wayne County composed of the townships of Plymouth and Northville, the cities of Plymouth and Livonia, and the City of Northville lying in both Wayne and Oakland counties. From Oakland County the townships of Holly, Groveland, Rose, Springfield, Highland, While Lake, Milford, Commerce, West Bloomfield, Lyon, Novi and Farmington and the cities of South Lyon, Farmington, Wixom, Walled Lake, Sylvan Lake and Keego Harbor.

15. From Oakland County the township of Royal Oak and the cities of Madison Heights, Hazel Park, Ferndale, Pleasant Ridge, Oak Park, Huntington Woods, Berkley, Southfield and Lathrup Village.

16. That part of Oakland County composed of the townships of Pontiac, Avon, Bloomfield and Southfield, and the Cities of Bloomfield Hills, Birmingham, Troy, Clawson and Royal Oak.

17. Lapeer County and that part of Oakland County composed of the townships of Brandon, Oxford, Addison, Independence, Orion, Oakland and Waterford and the City of Pontiac.

18. Washtenaw County and from Lenawee County the townships of Clinton, Tecumseh, Macon, Ridgeway, Deerfield, Blissfield, Raisin, Palmyra, Madison, Fairfield, Ogden, Riga and the City of Tecumseh.

19. Jackson County, that part of Lenawee County composed of the Townships of Woodstock, Cambridge, Rollin, Rome, Hudson, Dover, Medina, Franklin, Adrian and Seneca, and the cities of Hudson, Adrian and Morenci, and all of Hillsdale County except the townships of Camden, Reading and Woodbridge and the City of Reading.

20. Calhoun County, Branch County, that part of Hillsdale County composed of the townships of Camden,

District Number	*Senate Description*
	Reading, and Woodbridge and the City of Reading, and that part of Eaton County composed of the townships of Bellevue, Walton, Brookfield, Kalamo, Carmel and Vermontville, and the city of Olivet, and that part of Barry County composed of the townships of Woodland, Castleton, Maple Grove, Assyria, Johnston, Baltimore and Hastings, and the City of Hastings.
21.	Kalamazoo County, and from Barry County, the townships of Orangeville, Hope, Barry, Prairieville, Carlton, Irving, Rutland and Thornapple; and from St. Joseph County, the townships of Florence, Sturgis, Fawn River, Sherman, Burr Oak, Colon, Nottawa, Mendon and Leonidas and the City of Sturgis.
22.	Berrien County, Cass County and that part of St. Joseph County composed of the townships of Mottville, Constantine, Fabius, Flowerfield, White Pigeon, Lockport and Park, and the City of Three Rivers.
23.	The Counties of Ottawa, Allegan and Van Buren and that part of Barry County composed of Yankee Springs Township.
24.	All of Ingham County except the townships of Locke and Williamston and the City of Williamston.
25.	Livingston County and all of Genesee County except the City of Flint and that part of Genesee Township west of Bray Road.
26.	That part of Macomb County composed of the townships of Chesterfield, Harrison and Lake, and the cities of East Detroit, Roseville, St. Clair Shores, Fraser and the entire City of New Baltimore (including that part lying within St. Clair County). Also that part of St. Clair County composed of the townships of Ira and Casco.
27.	From Macomb County, the townships of Armada, Bruce, Clinton, Lenox, Macomb, Ray, Richmond, Shel-

District Number	*Senate Description*
	by, Sterling and Washington, and the cities of Centerline, Mt. Clemens, Utica and Warren and from Macomb and St. Clair Counties the City of Memphis.
28.	Huron and Sanilac Counties and from St. Clair County, the townships of Columbus, Clay, Cottrellville, East China, China, St. Clair, Kimball, Port Huron, Wales, Riley, Berlin, Mussey, Emmett, Kenockee, Clyde, Fort Gratiot, Burtchville, Grant, Greenwood, Brockway and Lynn and the cities of Marine City, Marysville, Port Huron, St. Clair and Yale, and all of Tuscola County except the townships of Denmark, Tuscola and Arbela.
29.	That part of Genesee County composed of the City of Flint and that part of Genesee Township west of Bray Road.
30.	The counties of Gratiot, Clinton and Shiawassee, that part of Ingham County composed of the townships of Locke and Williamston and the City of Williamston; that part of Eaton County composed of the townships of Hamlin, Eaton, Eaton Rapids, Chester, Benton, Windsor, Sunfield, Roxand, Oneida and Delta and the cities of Grand Ledge, Charlotte and Eaton Rapids; and all of Montcalm County except the townships of Reynolds, Pierson and Maple Valley.
31.	Ionia County, all of Kent County except the cities of Grand Rapids and Grandville, and the townships of Walker and Alpine, that part of Montcalm County composed of the townships of Reynolds, Pierson and Maple Valley, and that part of Newaygo County composed of the townships of Croton and Ensley.
32.	That part of Kent County composed of the cities of Grand Rapids and Grandville, and the townships of Walker and Alpine.
33.	The counties of Muskegon, Oceana, Mason and Lake, and that part of Manistee County composed of the

District Number	*Senate Description*
	townships of Filer and Manistee and the City of Manistee.
34.	That part of Saginaw County composed of the townships of Carrollton, Zilwaukee, Buena Vista and Kochville, and the City of Saginaw, and that part of Bay County composed of the townships of Frankenlust, Portsmouth, Monitor, Bangor and Hampton and the cities of Essexville and Bay City.
35.	The counties of Midland, Gladwin, Arenac, Ogemaw, Iosco, Oscoda and Alcona; from Tuscola County the townships of Denmark, Tuscola and Arbela and from Bay County the townships of Beaver, Fraser, Garfield, Gibson, Kawkawlin, Merritt, Mount Forest, Pinconning and Williams and the cities of Auburn and Pinconning and all of Saginaw County except the townships of Carrollton, Zilwaukee, Buena Vista and Kochville and the City of Saginaw.
36.	The counties of Mecosta, Isabella, Osceola, Clare, Roscommon, Crawford, Missaukee, Kalkaska, Wexford, Grand Traverse, Leelanau, and Benzie, and from Antrim County the townships of Elk Rapids, Milton, Helena and Custer; all of Manistee County except the townships of Filer and Manistee and the City of Manistee; all of Newaygo County except the townships of Croton and Ensley.
37.	The counties of Otsego, Montmorency, Alpena, Charlevoix, Cheboygan, Presque Isle, Emmet, Mackinac, Chippewa, Luce, Schoolcraft and Delta, and from Alger County, the townships of Burt, Munising and Grand Island and the City of Munising; all of Antrim County except the townships of Custer, Helena, Elk Rapids and Milton.
38.	That part of Alger County composed of the townships of Onota, Rock River, Limestone, Mathias and Au Train, and the Counties of Menominee, Dickinson, Marquette, Iron, Gogebic, Ontonagon, Baraga, Houghton and Keweenaw.

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PAGE

HOUSE

CHEBOYGAN
EMMET
CHARLEVOIX
OTSEGO
MONTMORENCY
ALPENA
ANTRIM
LELANAU
KALKASKA
CRAWFORD
OSCODA
ALCONA
BENZIE
GRAND TRAVERSE
MANISTEE
WEXFORD
MISSAUKEE
ROSCOMMON
OGEMAW
IOSCO
MASON
LAKE
OSCEOLA
CLARE
GLADWIN
ARENAC
HURON
OCEANA
NEWAYGO
MECOSTA
ISABELLA
MIDLAND
BAY
TUSCOLA
SANILAC
MUSKEGON
MONTCALM
GRATIOT
SAGINAW
GENESEE
LAPEER
ST. CLAIR
OTTAWA
KENT
IONIA
CLINTON
SHIAWASSEE
OAKLAND
MACOMB
ALLEGAN
BARRY
EATON
INGHAM
LIVINGSTON
VAN BUREN
KALAMAZOO
CALHOUN
JACKSON
WASHTENAW
WAYNE
CASS
ST. JOSEPH
BRANCH
HILLSDALE
LENAWEE
MONROE

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POPULATION OF DISTRICTS, 1960

District	1960 Population	District	1960 Population	District	1960 Population
1	70,123	38	70,007	75	70,886
2	72,200	39	70,632	76	71,100
3	71,358	40	71,681	77	71,586
4	71,286	41	71,797	78	71,975
5	70,987	42	71,460	79	71,698
6	71,273	43	71,472	80	71,086
7	70,858	44	70,681	81	70,353
8	70,813	45	70,961	82	70,879
9	71,403	46	71,047	83	70,426
10	71,088	47	71,049	84	71,060
11	70,872	48	71,436	85	71,711
12	70,748	49	[redacted]565	86	71,629
13	70,879	50	71,290	87	71,632
14	70,740	51	70,849	88	71,783
15	71,157	52	70,861	89	71,781
16	71,180	53	70,776	90	70,656
17	70,997	54	71,964	91	71,573
18	71,362	55	71,886	92	71,112
19	70,892	56	71,320	93	70,972
20	70,746	57	71,522	94	71,290
21	70,735	58	70,977	95	71,666
22	70,652	59	71,962	96	70,633
23	70,972	60	71,288	97	71,515
24	70,720	61	71,046	98	70,651
25	70,899	62	70,646	99	70,453
26	71,437	63	71,484	100	71,143
27	70,262	64	70,746	101	71,255
28	71,655	65	71,763	102	71,832
29	71,646	66	71,672	103	71,865
30	70,883	67	70,231	104	71,429
31	72,162	68	70,601	105	70,446
32	71,455	69	70,997	106	71,792
33	69,585	70	71,957	107	71,275
34	71,276	71	71,905	108	71,088
35	69,985	72	71,497	109	71,208
36	69,902	73	70,884	110	71,329
37	72,032	74	69,118	Total	7,824,018

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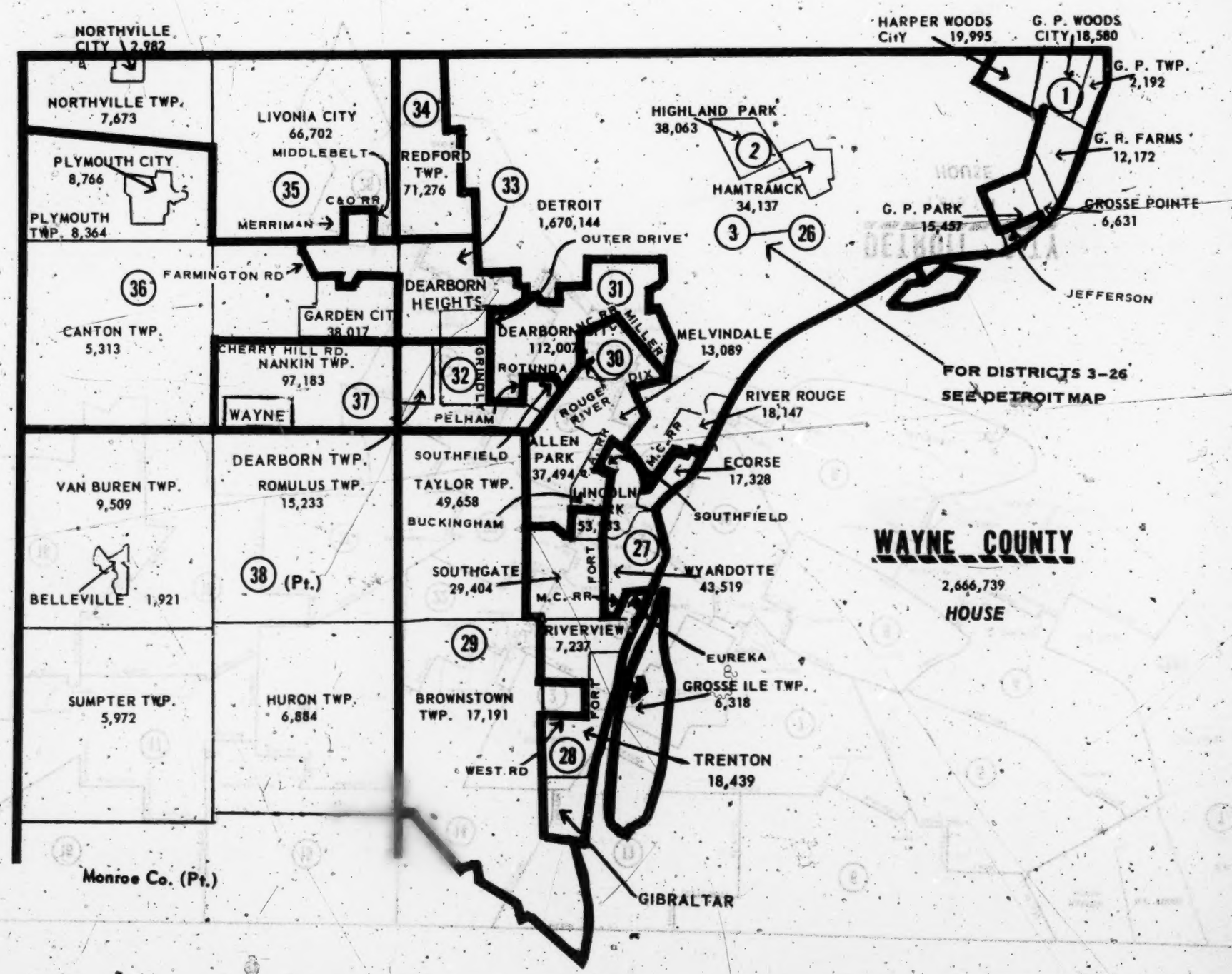
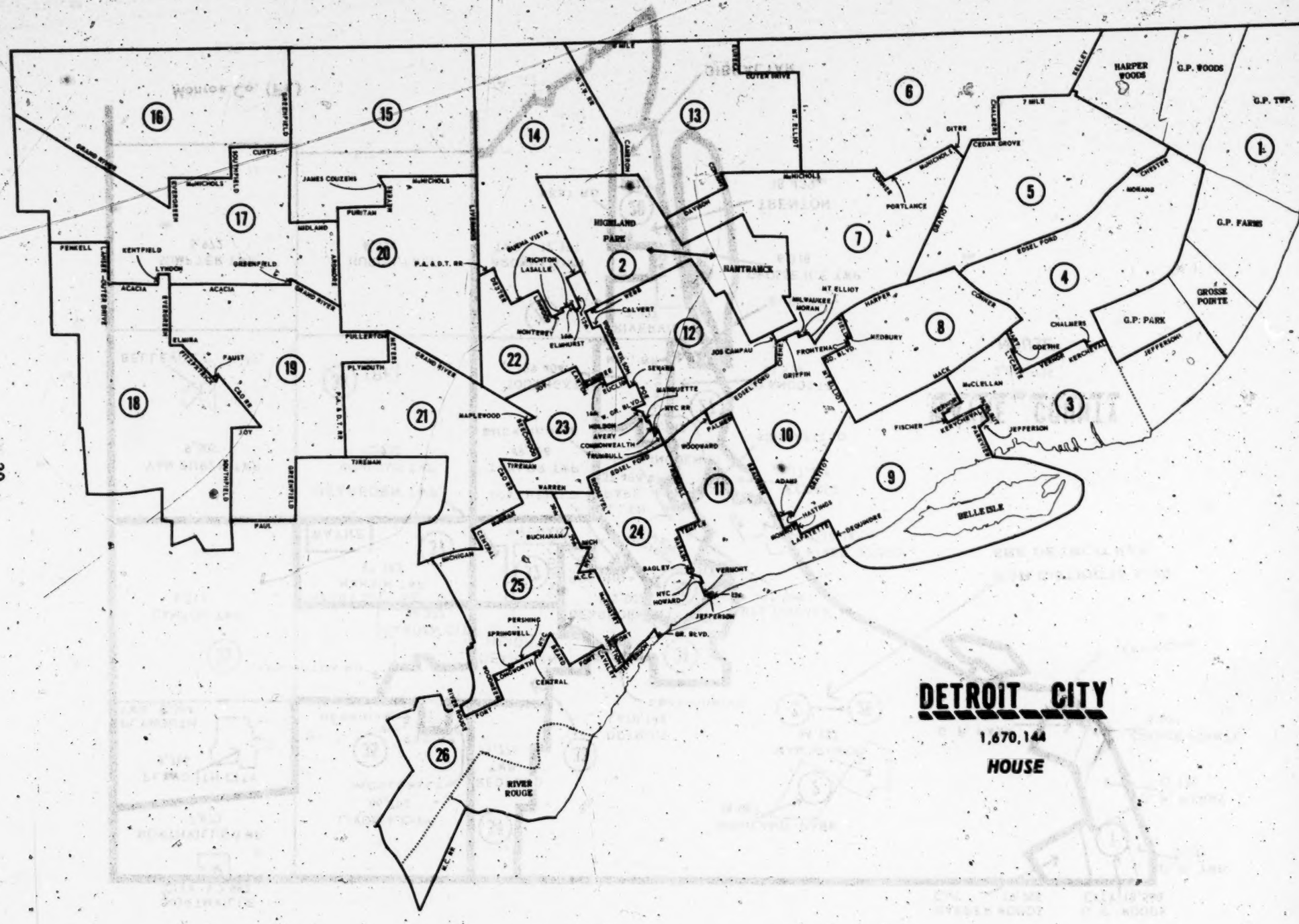

NORTHVILLE CITY 2,982
NORTHVILLE TWP. 7,673
PLYMOUTH CITY 8,766
PLYMOUTH TWP. 8,364
LIVONIA CITY 66,702
MIDDLEBELT
MERRIMAN
C&O RR
REDFORD TWP. 71,276
DETROIT 1,670,144
OUTER DRIVE
FARMINGTON RD
CANTON TWP. 5,313
GARDEN CITY 38,017
DEARBORN HEIGHTS
CHERRY HILL RD.
NANKIN TWP. 97,183
WAYNE
GRINDLE
PELHAM
ROTUNDA
DEARBORN CITY 112,007
MILLER
DIX
ROUGE RIVER
MELVINDALE 13,089
RIVER ROUGE 18,147
M.C. RR
ECORSE 17,328
SOUTHFIELD
ALLEN PARK 37,494
LINCOLN PARK 53,[illegible]
DEARBORN TWP.
ROMULUS TWP. 15,233
SOUTHFIELD
TAYLOR TWP. 49,658
BUCKINGHAM
VAN BUREN TWP. 9,509
BELLEVILLE 1,921
SOUTHGATE 29,404
FORT
M.C. RR
WYANDOTTE 43,519
RIVERVIEW 7,237
EUREKA
GROSSE ILE TWP. 6,318
SUMPTER TWP. 5,972
HURON TWP. 6,884
BROWNSTOWN TWP. 17,191
WEST RD
TRENTON 18,439
GIBRALTAR
Monroe Co. (Pt.)
HARPER WOODS City 19,995
G. P. WOODS CITY 18,580
G. P. TWP. 2,192
G. P. FARMS 12,172
HIGHLAND PARK 38,063
HAMTRAMCK 34,137
G. P. PARK 15,457
GROSSE POINTE 6,631
JEFFERSON
FOR DISTRICTS 3–26 SEE DETROIT MAP
WAYNE COUNTY
2,666,739
HOUSE


DETROIT CITY
1,670,144
HOUSE
HIGHLAND PARK
HAMTRAMCK
HARPER WOODS
G.P. WOODS
G.P. TWP.
G.P. FARMS
GROSSE POINTE
G.P. PARK
BELLE ISLE
RIVER ROUGE
7 MILE
GRAND RIVER
JOY
PLYMOUTH
WARREN
MACK
JEFFERSON
MT ELLIOT
DAVISON
CHRYSLER
EDSEL FORD
GRATIOT
WOODWARD
VERNOR
MICHIGAN
FORT
CENTRAL
16
15
14
13
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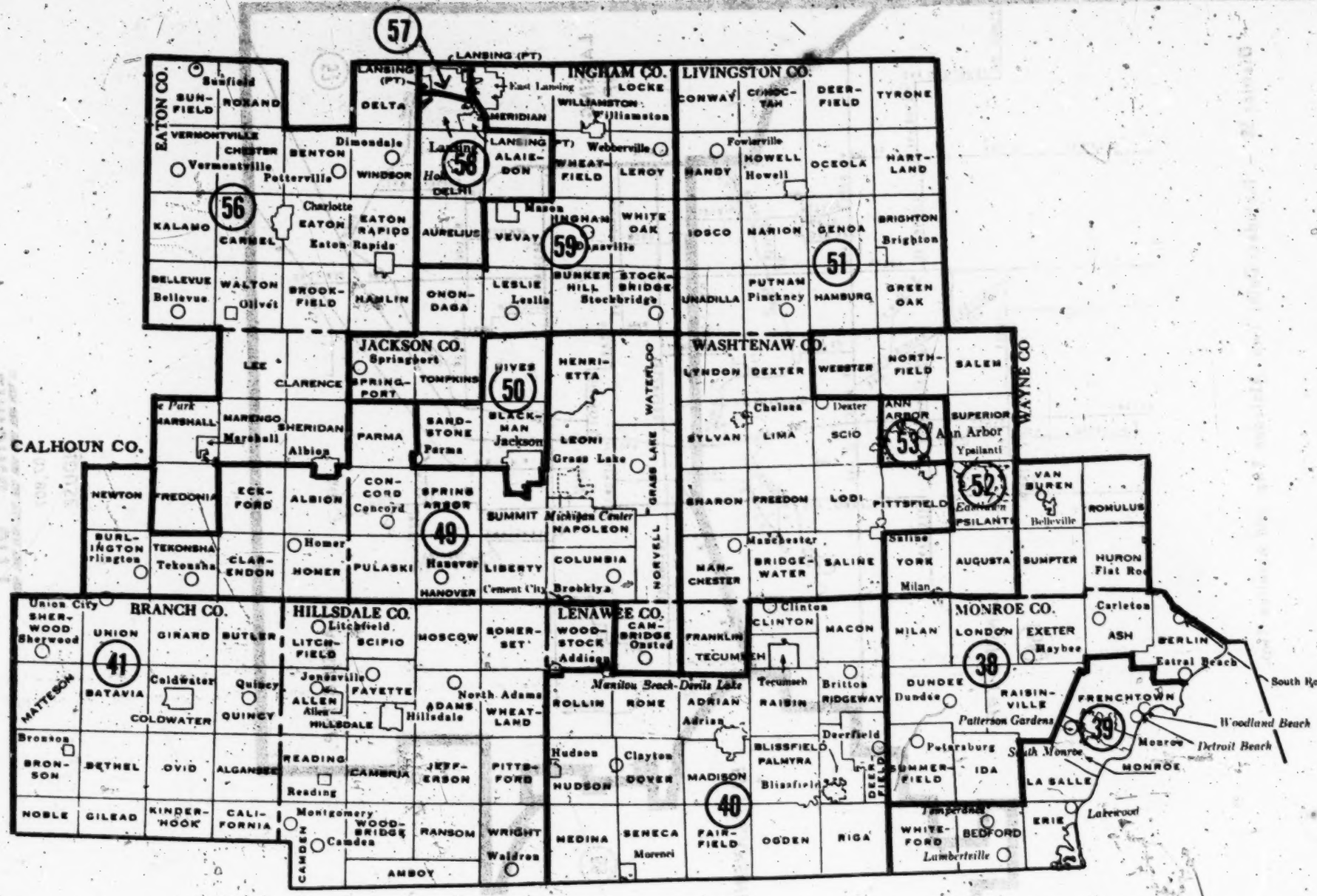


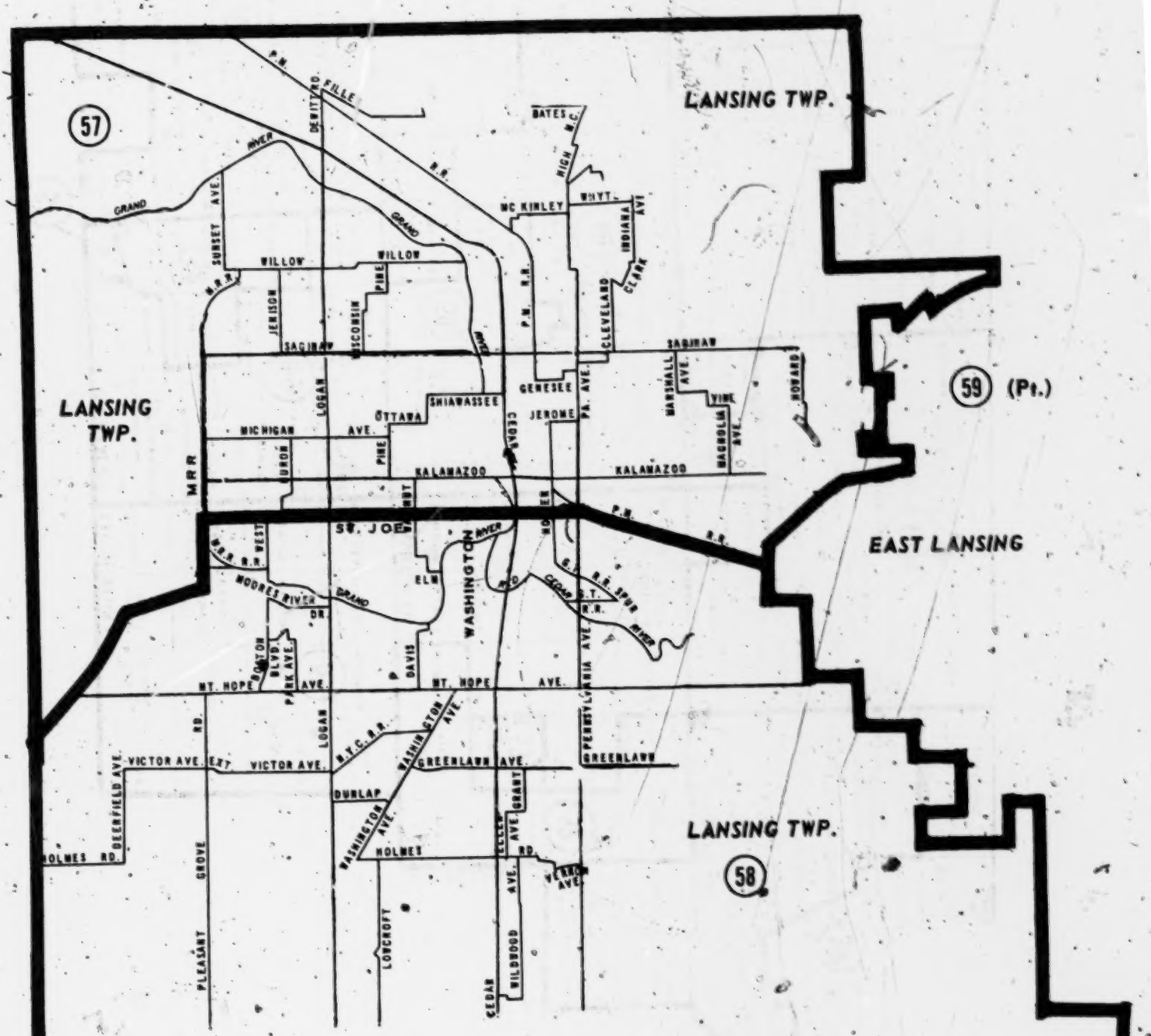
HOUSE MAP A

– 31 –

LANSING CITY

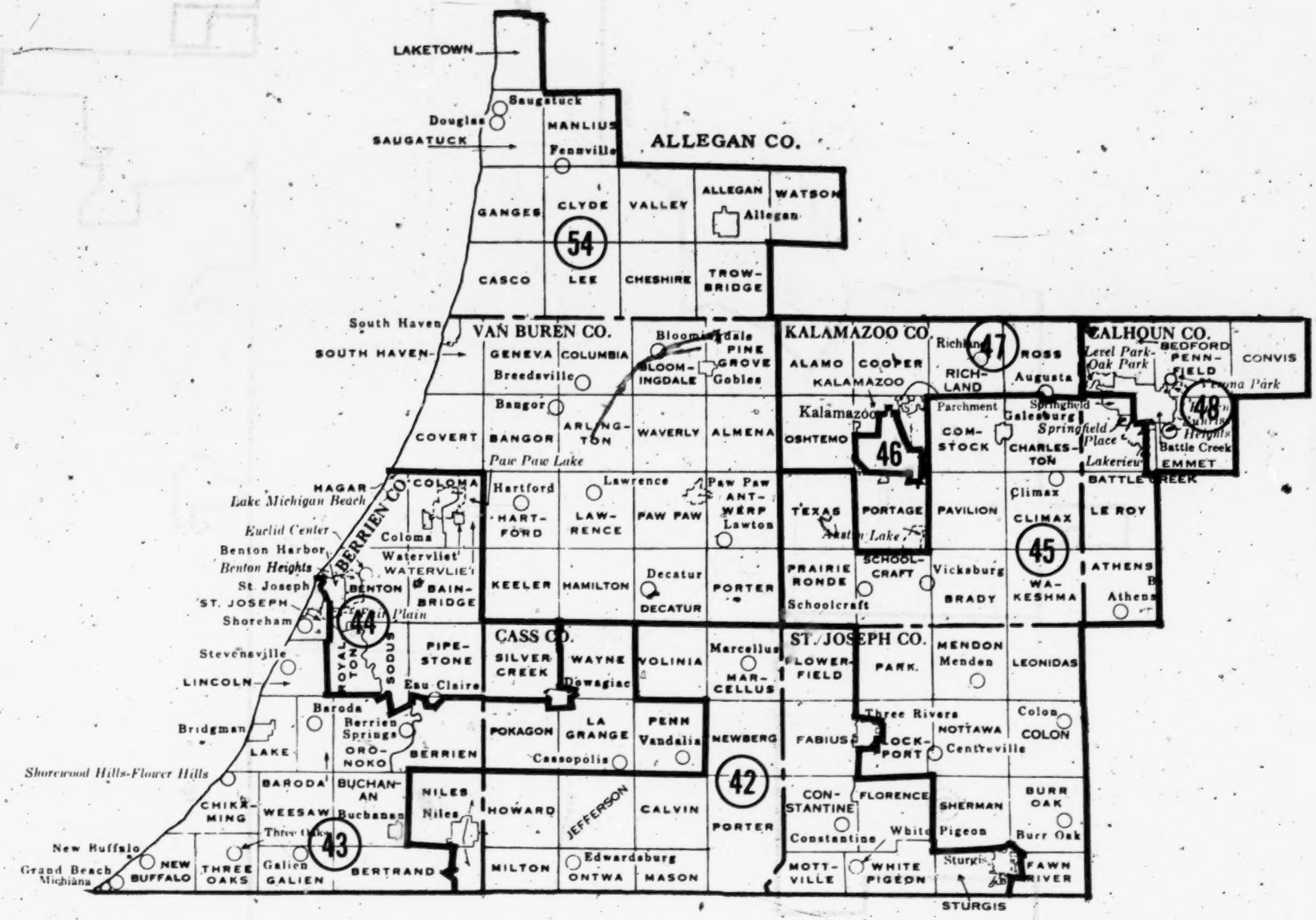
107,807

HOUSE 9



District 58 — Includes: Delhi Twp., Alaiedon Twp. and Aurelius Twp.

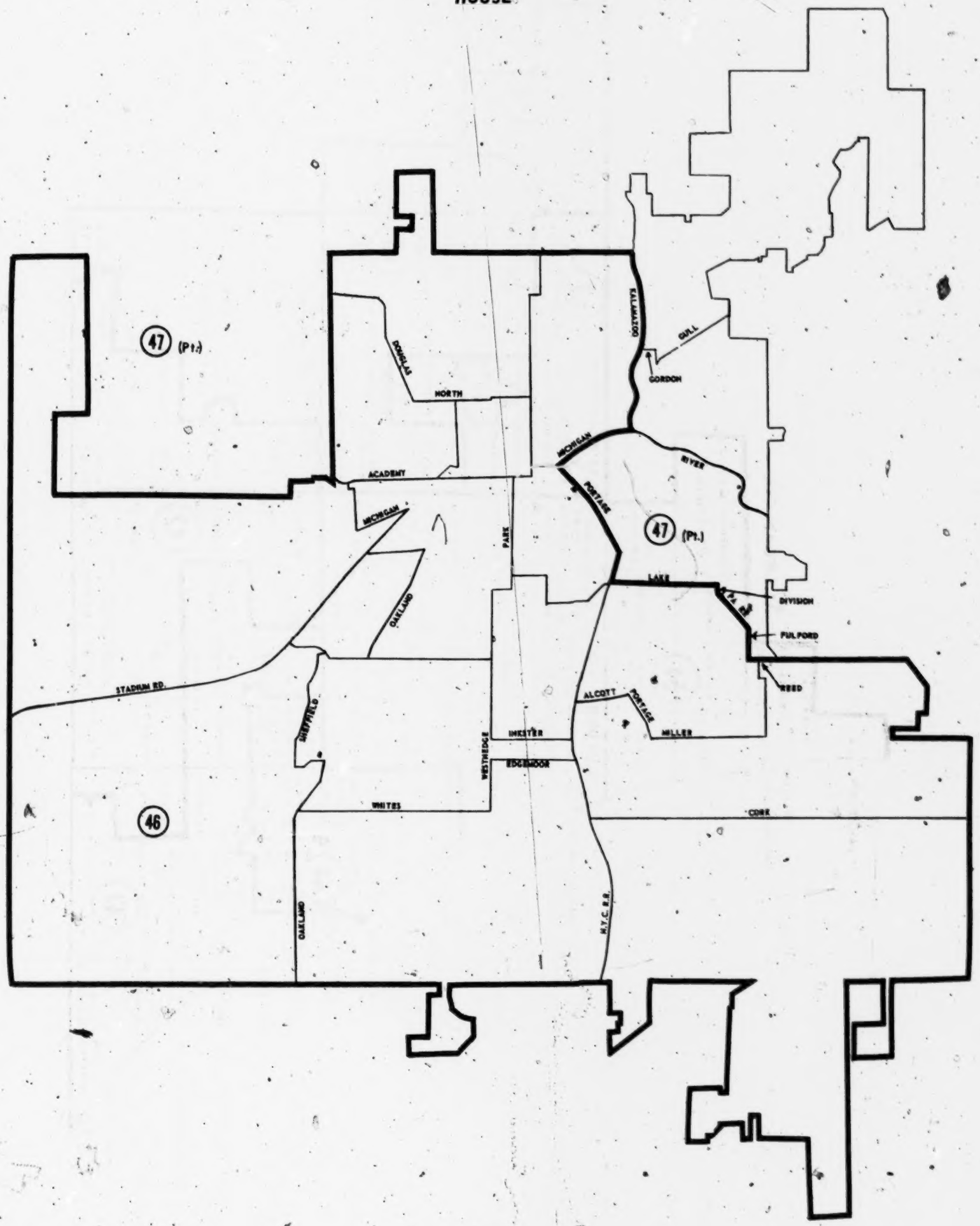
164a


LAKETOWN
Saugatuck
Douglas
SAUGATUCK
MANLIUS
Fennville
ALLEGAN CO.
GANGES
CLYDE
VALLEY
ALLEGAN
WATSON
Allegan
54
CASCO
LEE
CHESHIRE
TROW-
BRIDGE
South Haven
SOUTH HAVEN
VAN BUREN CO.
GENEVA
COLUMBIA
Bloomingdale
PINE
GROVE
Breedsville
BLOOM-
INGDALE
Gobles
Bangor
COVERT
BANGOR
ARLING-
TON
WAVERLY
ALMENA
Paw Paw Lake
HAGAR
Lake Michigan Beach
COLOMA
Hartford
Lawrence
Paw Paw
ANT-
WERP
Euclid Center
Coloma
HART-
FORD
LAW-
RENCE
PAW PAW
Lawton
Benton Harbor
Benton Heights
Watervliet
WATERVLIET
St. Joseph
BENTON
BAIN-
BRIDGE
ST. JOSEPH
Shoreham
44
KEELER
HAMILTON
Decatur
DECATUR
PORTER
Stevensville
PIPE-
STONE
CASS CO.
SILVER
CREEK
WAYNE
VOLINIA
Marcellus
MAR-
CELLUS
LINCOLN
Bridgman
Baroda
Berrien
Springs
LAKE
ORO-
NOKO
BERRIEN
POKAGON
LA
GRANGE
PENN
Vandalia
NEWBERG
Cassopolis
Shorewood Hills-Flower Hills
CHIKA-
MING
BARODA
BUCHAN-
AN
WEESAW
Buchanan
NILES
Niles
HOWARD
JEFFERSON
CALVIN
42
PORTER
New Buffalo
Three Oaks
43
Grand Beach
Michiana
NEW
BUFFALO
THREE
OAKS
Galien
GALIEN
BERTRAND
MILTON
Edwardsburg
ONTWA
MASON
KALAMAZOO CO.
ALAMO
COOPER
Richland
47
ROSS
KALAMAZOO
RICH-
LAND
Augusta
Kalamazoo
Parchment
Galesburg
Springfield
OSHTEMO
46
COM-
STOCK
CHARLES-
TON
Springfield
Place
Lakeview
CALHOUN CO.
Level Park-
Oak Park
BEDFORD
PENN-
FIELD
CONVIS
Battle Creek
Heights
48
EMMET
BATTLE
CREEK
Climax
TEXAS
PORTAGE
PAVILION
CLIMAX
LE ROY
Austin Lake
PRAIRIE
RONDE
SCHOOL-
CRAFT
Vicksburg
45
ATHENS
Schoolcraft
BRADY
WA-
KESHMA
Athens
ST. JOSEPH CO.
FLOWER-
FIELD
PARK
MENDON
Mendon
LEONIDAS
Three Rivers
NOTTAWA
Colon
FABIUS
LOCK-
PORT
Centreville
COLON
CON-
STANTINE
FLORENCE
SHERMAN
BURR
OAK
Constantine
White
Pigeon
Burr Oak
MOTT-
VILLE
WHITE
PIGEON
Sturgis
FAWN
RIVER
STURGIS

1658

KALAMAZOO CITY

HOUSE



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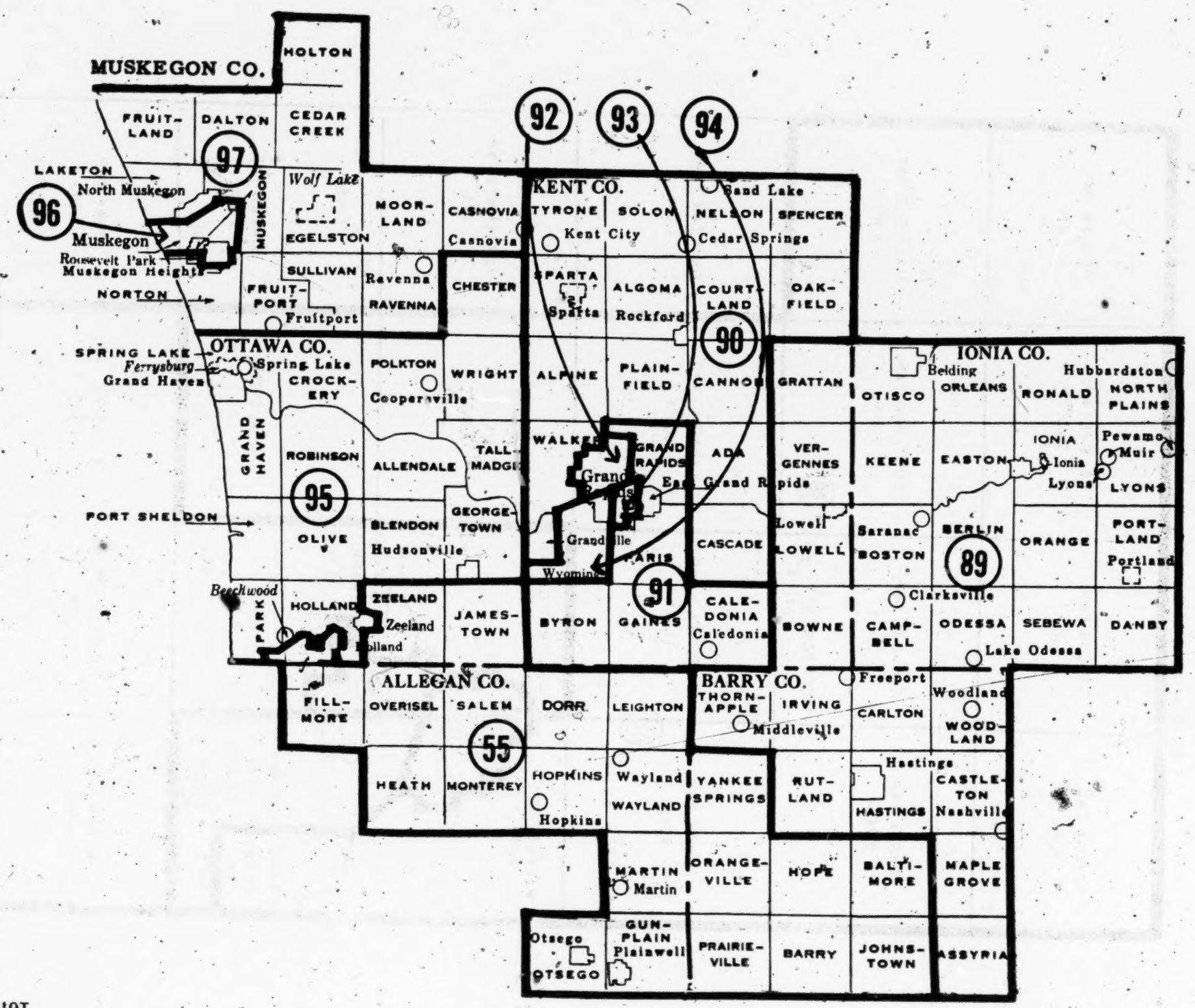


1678

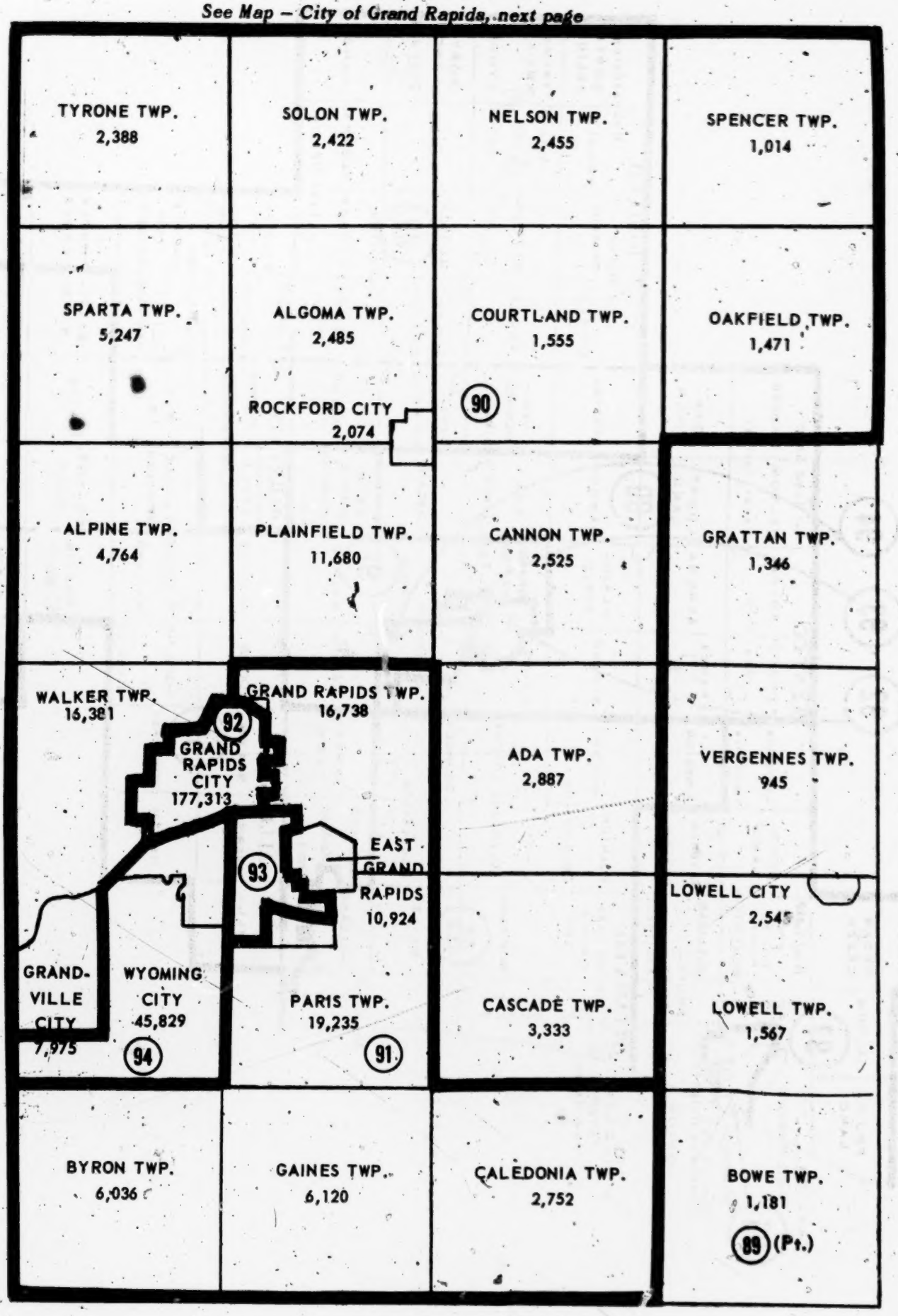
HOUSE MAR C

KENT COUNTY

363,187

HOUSE

See Map – City of Grand Rapids, next page

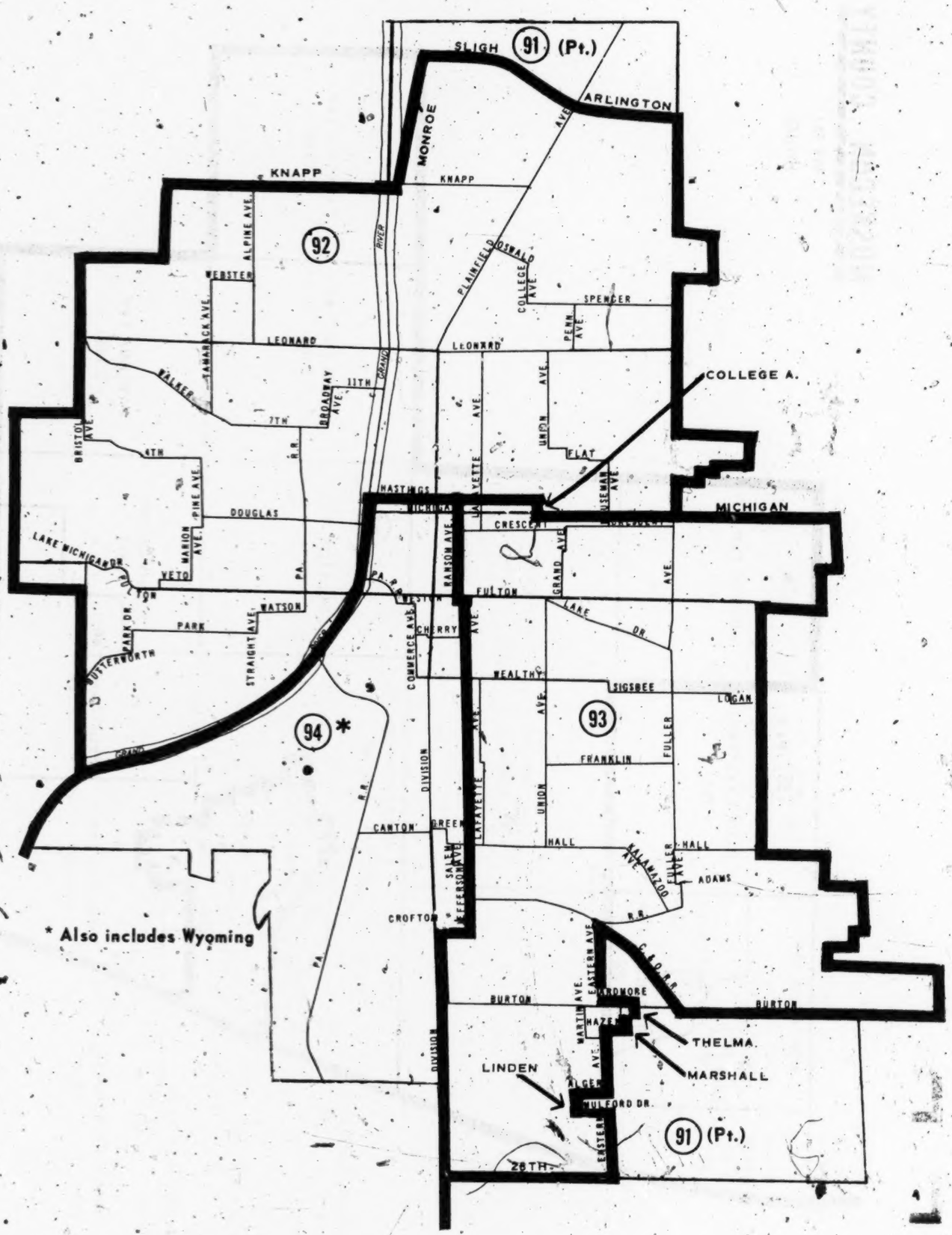


168a

GRAND RAPIDS CITY

177,313

HOUSE



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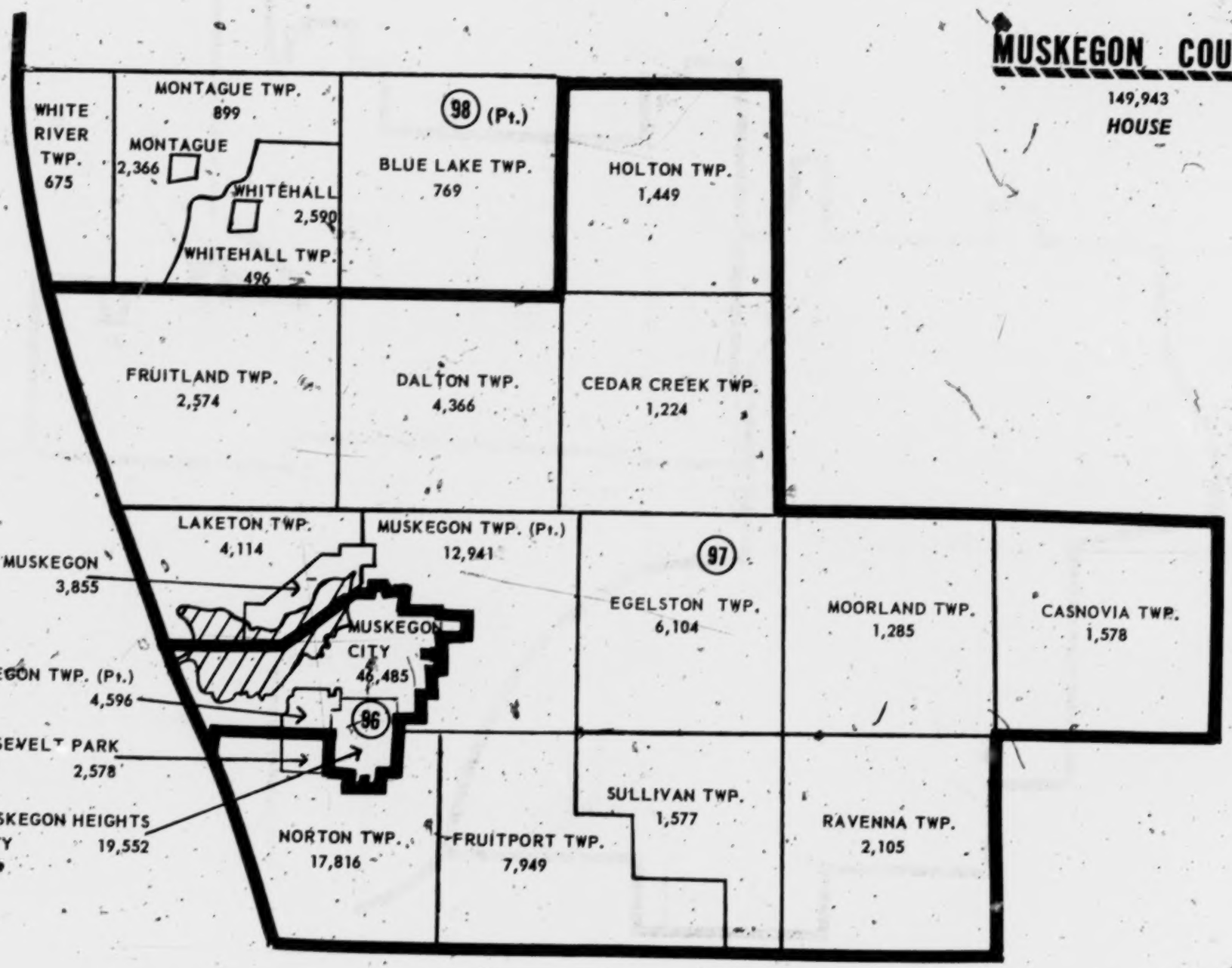
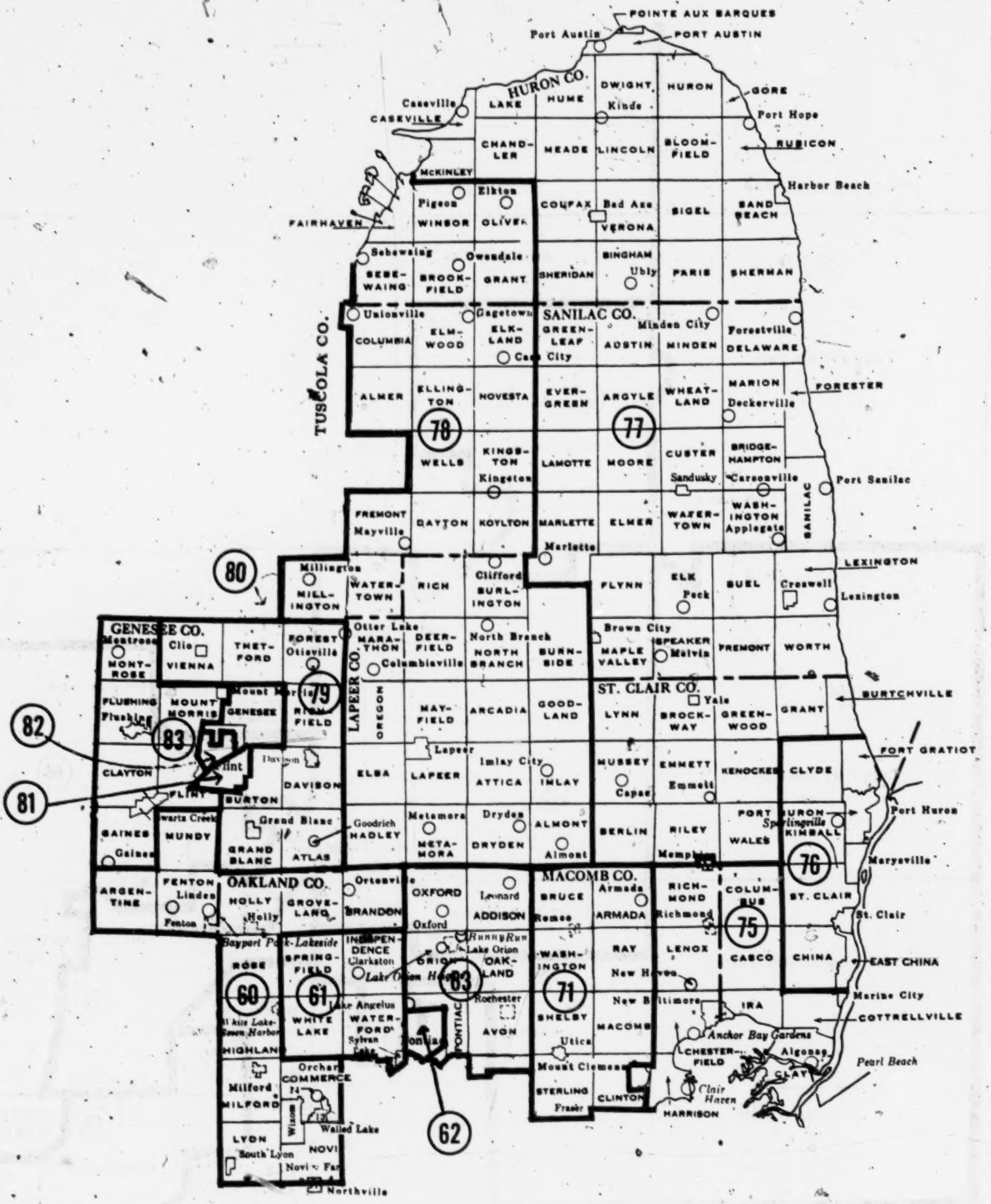

MUSKEGON COUNTY
149,943
HOUSE
WHITE RIVER TWP. 675
MONTAGUE TWP. 899
MONTAGUE 2,366
WHITEHALL 2,590
WHITEHALL TWP. 496
98 (Pt.)
BLUE LAKE TWP. 769
HOLTON TWP. 1,449
FRUITLAND TWP. 2,574
DALTON TWP. 4,366
CEDAR CREEK TWP. 1,224
I-38
LAKETON TWP. 4,114
MUSKEGON TWP. (Pt.) 12,941
NORTH MUSKEGON CITY 3,855
MUSKEGON CITY 46,485
97
EGELSTON TWP. 6,104
MOORLAND TWP. 1,285
CASNOVIA TWP. 1,578
MUSKEGON TWP. (Pt.) 4,596
86
ROOSEVELT PARK CITY 2,578
MUSKEGON HEIGHTS CITY 19,552
SULLIVAN TWP. 1,577
RAVENNA TWP. 2,105
NORTON TWP. 17,816
FRUITPORT TWP. 7,949


POINTE AUX BARQUES
Port Austin
PORT AUSTIN
HURON CO.
Caseville
CASEVILLE
LAKE
HUME
DWIGHT
Kinde
HURON
GORE
Port Hope
RUBICON
CHAND-LER
MEADE
LINCOLN
BLOOM-FIELD
McKINLEY
Harbor Beach
Pigeon
Elkton
COLFAX
Bad Axe
VERONA
SIGEL
SAND BEACH
FAIRHAVEN
WINSOR
OLIVER
Sebewaing
Owendale
SEBE-WAING
BROOK-FIELD
GRANT
SHERIDAN
BINGHAM
Ubly
PARIS
SHERMAN
TUSCOLA CO.
Unionville
Gagetown
SANILAC CO.
Minden City
Forestville
COLUMBIA
ELM-WOOD
ELK-LAND
GREEN-LEAF
AUSTIN
MINDEN
DELAWARE
Cass City
ALMER
ELLING-TON
NOVESTA
EVER-GREEN
ARGYLE
WHEAT-LAND
MARION
Deckerville
FORESTER
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KINGS-TON
Kingston
LAMOTTE
MOORE
CUSTER
BRIDGE-HAMPTON
Sandusky
Carsonville
Port Sanilac
SANILAC
FREMONT
Mayville
DAYTON
KOYLTON
MARLETTE
Marlette
ELMER
WATER-TOWN
WASH-INGTON
Applegate
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LEXINGTON
Millington
MILL-INGTON
WATER-TOWN
RICH
Clifford
BURL-INGTON
FLYNN
ELK
Peck
BUEL
Croswell
Lexington
GENESEE CO.
Otter Lake
Brown City
Montrose
Clio
THET-FORD
FOREST
Otisville
MARA-THON
Columbiaville
DEER-FIELD
North Branch
NORTH BRANCH
BURN-SIDE
SPEAKER
Melvin
MAPLE VALLEY
PREMONT
WORTH
MONT-ROSE
VIENNA
LAPEER CO.
ST. CLAIR CO.
Yale
BURTCHVILLE
FLUSHING
Flushing
MOUNT MORRIS
Mount Morris
GENESEE
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OREGON
MAY-FIELD
ARCADIA
GOOD-LAND
LYNN
BROCK-WAY
GREEN-WOOD
GRANT
82
83
FLINT
CLAYTON
Flint
Davison
DAVISON
ELBA
LAPEER
Lapeer
Imlay City
ATTICA
IMLAY
MUSSEY
Capac
EMMETT
Emmett
KENOCKEE
CLYDE
FORT GRATIOT
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BURTON
Metamora
Dryden
ALMONT
Almont
PORT HURON
Port Huron
GAINES
Gaines
MUNDY
Grand Blanc
Goodrich
HADLEY
GRAND BLANC
ATLAS
META-MORA
DRYDEN
BERLIN
RILEY
Memphis
WALES
KIMBALL
Marysville
ARGEN-TINE
FENTON
Linden
Fenton
OAKLAND CO.
Ortonville
OXFORD
Leonard
MACOMB CO.
Armada
RICH-MOND
COLUM-BUS
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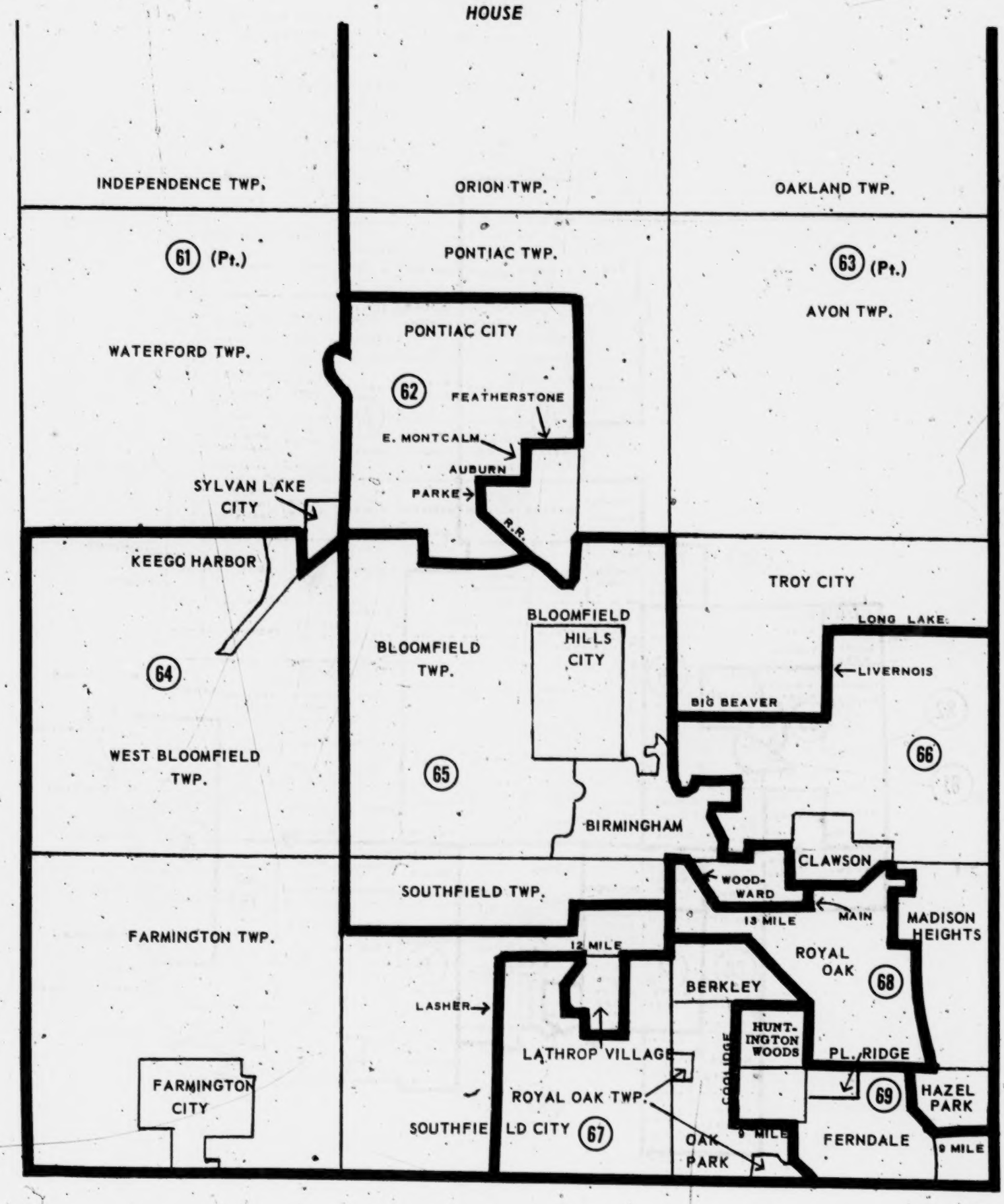
HOLLY
Holly
GROVE-LAND
BRANDON
Oxford
ADDISON
BRUCE
Romeo
ARMADA
Richmond
ST. CLAIR
St. Clair
Bayport Park-Lakeside
INDEPEN-DENCE
Clarkston
Lake Orion
RAY
LENOX
75
CASCO
CHINA
EAST CHINA
ROSE
SPRING-FIELD
OAK-LAND
WASH-INGTON
New Haven
60
61
63
71
Lake Angelus
WATER-FORD
Sylvan Lake
Rochester
New Baltimore
IRA
Marine City
COTTRELLVILLE
WHITE LAKE
PONTIAC
SHELBY
MACOMB
Anchor Bay Gardens
Utica
CHESTER-FIELD
Algonac
Pearl Beach
HIGHLAND
Orchard
COMMERCE
Milford
MILFORD
Clair
Haven
CLAY
Mount Clemens
STERLING
Fraser
CLINTON
HARRISON
Walled Lake
LYON
South Lyon
NOVI
Novi
62
Northville

171a

OAKLAND COUNTY

690,603

HOUSE

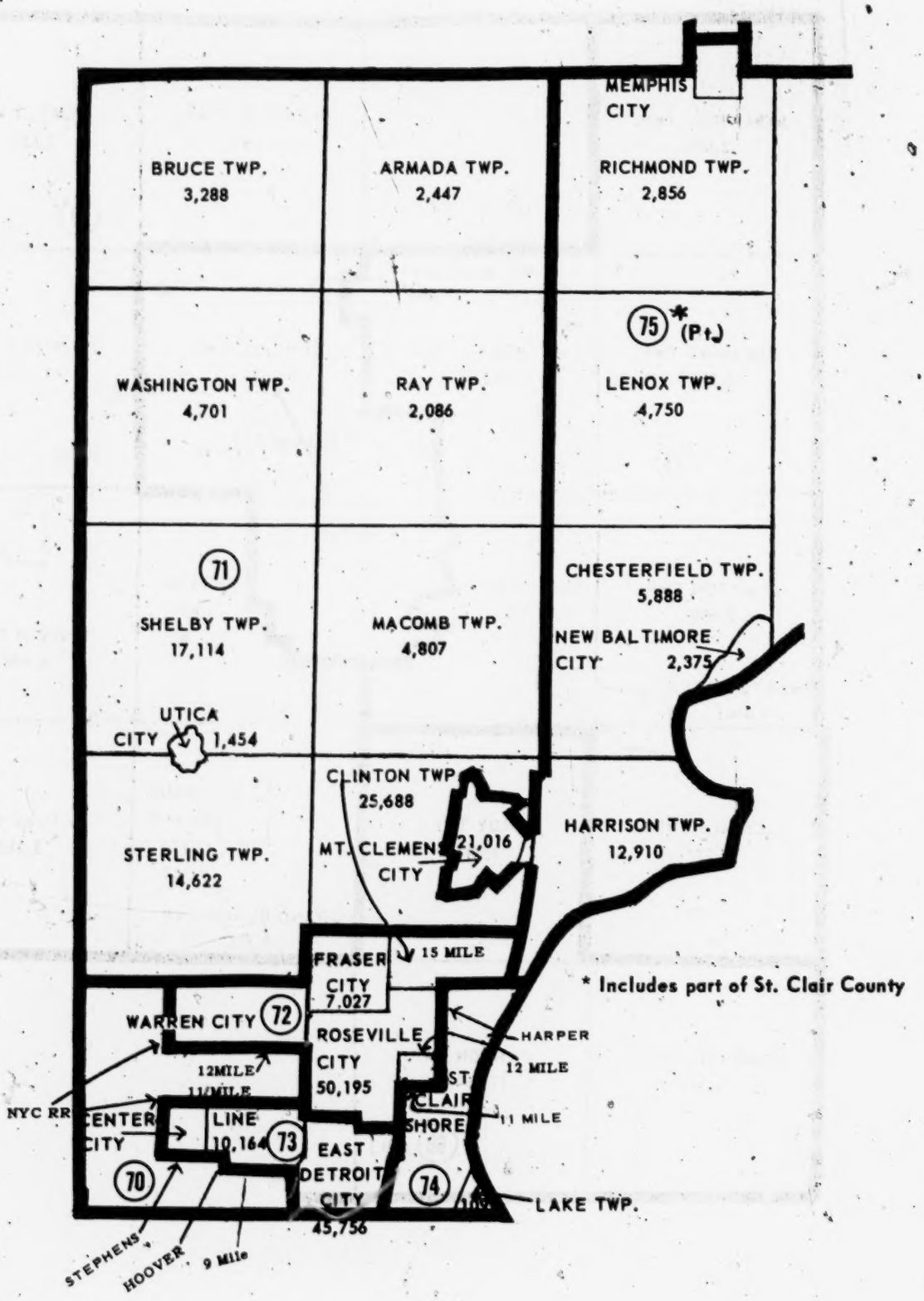


172a

MACOMB COUNTY

405,804

HOUSE



* Includes part of St. Clair County

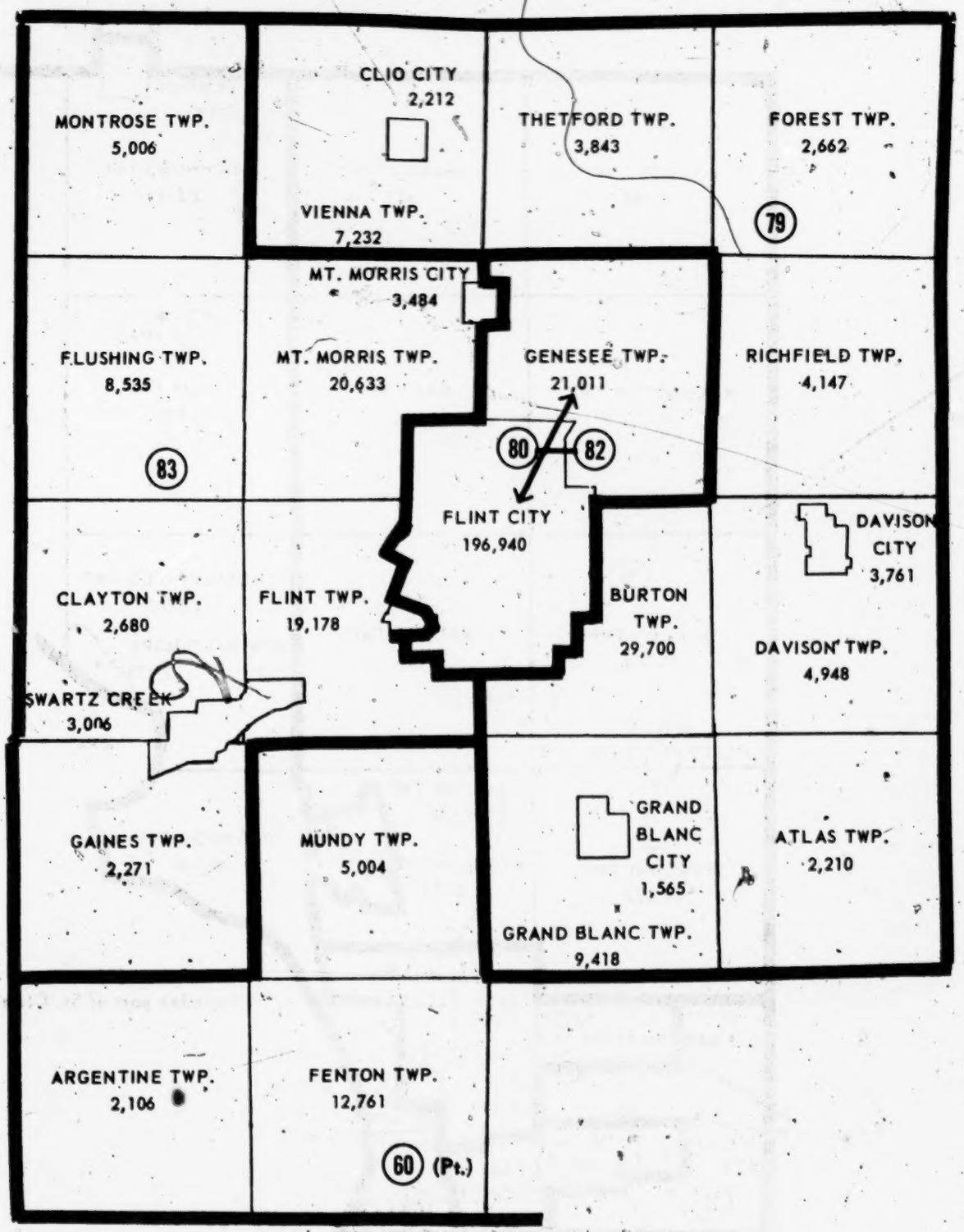
173a

GENESEE COUNTY

374,313

HOUSE

See Map — City of Flint, next page

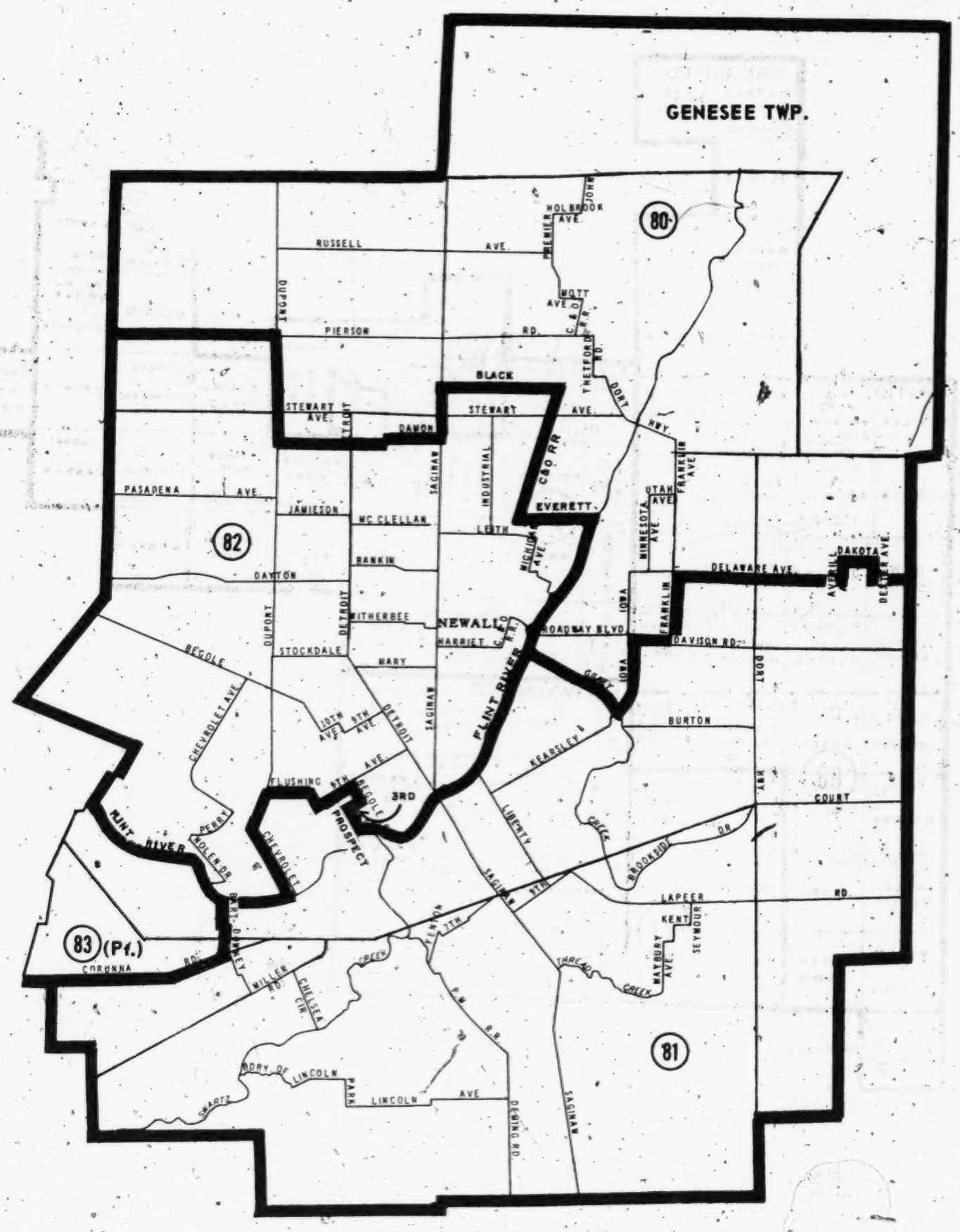


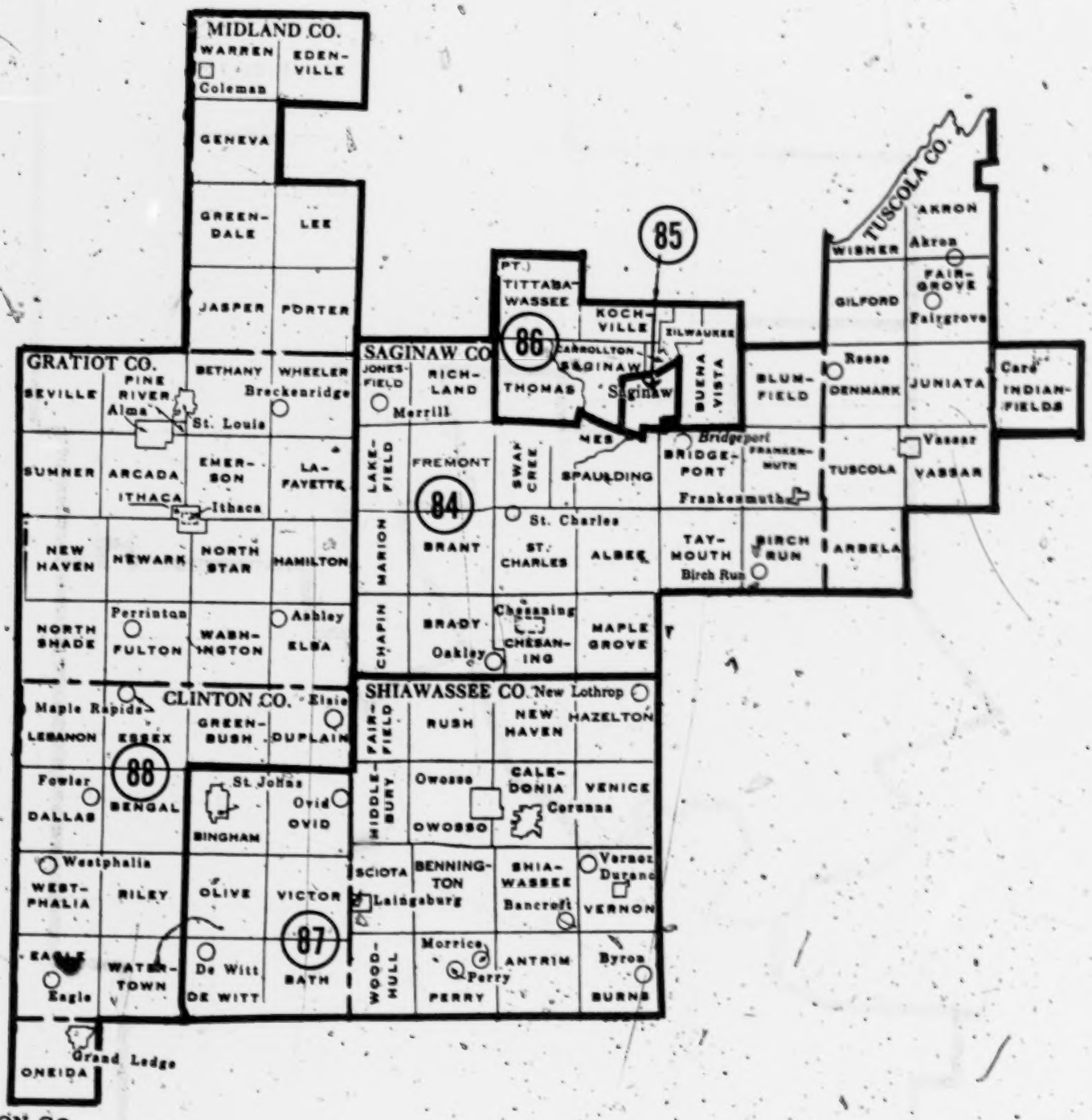
174a

FLINT CITY

196,940

HOUSE



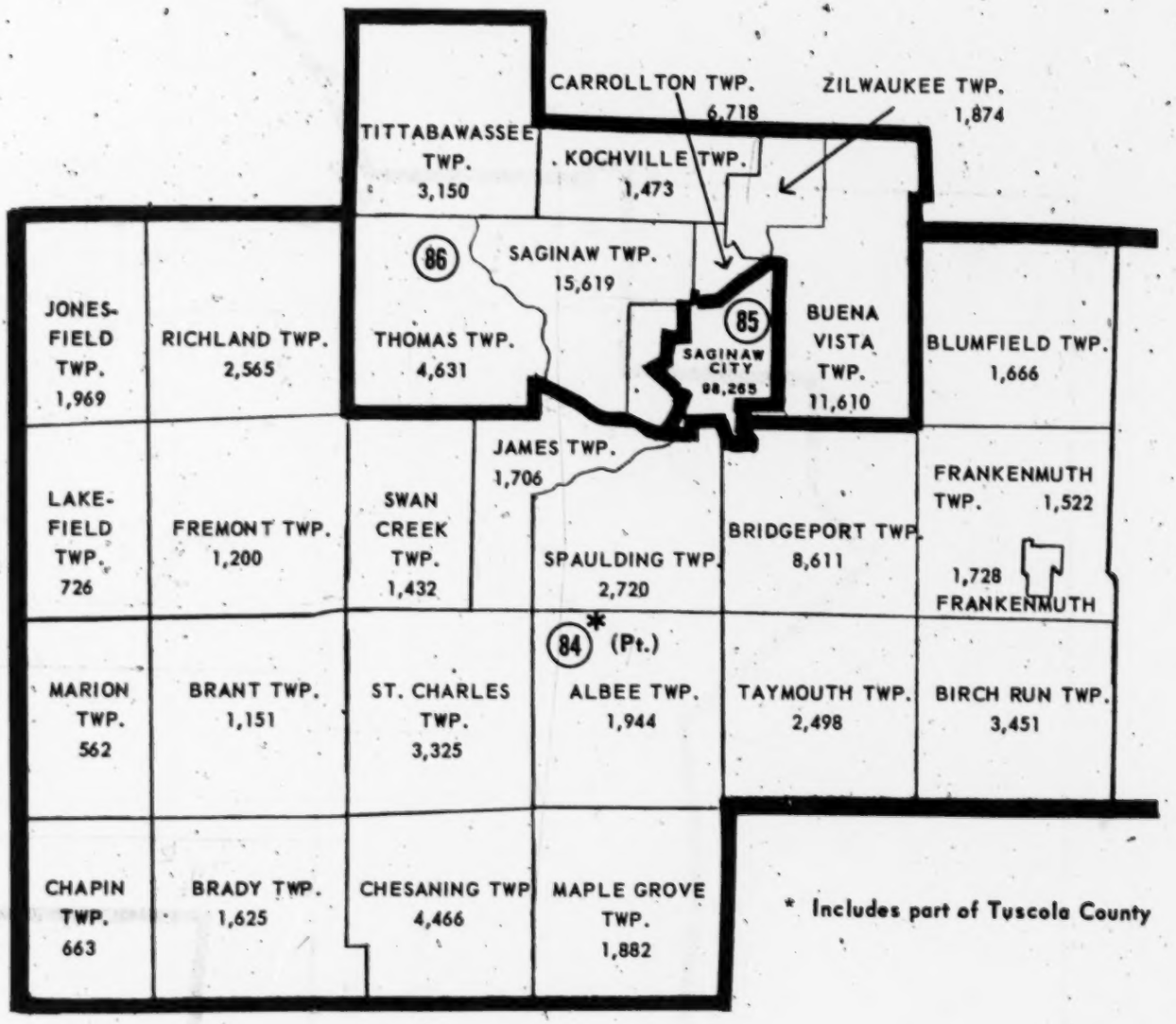

MIDLAND CO.
WARREN
Coleman
EDEN-VILLE
GENEVA
GREEN-DALE
LEE
JASPER
PORTER
TUSCOLA CO.
AKRON
Akron
WISNER
FAIR-GROVE
Fairgrove
GILFORD
85
PT.)
TITTABA-WASSEE
KOCH-VILLE
86
CARROLLTON
SAGINAW
Saginaw
WILWAUKEE
BUENA VISTA
SAGINAW CO.
GRATIOT CO.
BETHANY
WHEELER
Breckenridge
PINE RIVER
Alma
St. Louis
SEVILLE
JONES-FIELD
RICH-LAND
Merrill
THOMAS
BLUM-FIELD
Reese
DENNARK
JUNIATA
Carr
INDIAN-FIELDS
SUMNER
ARCADA
ITHACA
EMER-SON
Ithaca
LA-FAYETTE
LAKE-FIELD
FREMONT
84
SWAN CREK
SPAULDING
MES
Bridgeport
BRIDGE-PORT
FRANKEN-MUTH
Frankenmuth
TUSCOLA
Vassar
VASSAR
NEW HAVEN
NEWARK
NORTH STAR
HAMILTON
MARION
BRANT
St. Charles
ST. CHARLES
ALBEE
TAY-MOUTH
Birch Run
BIRCH RUN
ARBELA
NORTH SHADE
Perrinton
FULTON
WASH-INGTON
Ashley
ELBA
CHAPIN
BRADY
Oakley
Chesaning
CHESAN-ING
MAPLE GROVE
CLINTON CO.
Maple Rapids
LEBANON
ESSEX
GREEN-BUSH
Elsie
DUPLAIN
SHIAWASSEE CO.
New Lothrop
FAIR-FIELD
RUSH
NEW HAVEN
HAZELTON
88
Fowler
DALLAS
BENGAL
St Johns
BINGHAM
Ovid
OVID
MIDDLE-BURY
Owosso
OWOSSO
CALE-DONIA
Corunna
VENICE
Westphalia
WEST-PHALIA
RILEY
OLIVE
VICTOR
87
SCIOTA
BENNING-TON
Laingsburg
SHIA-WASSEE
Bancroft
Vernon
Durand
VERNON
EAGLE
Eagle
WATER-TOWN
De Witt
DE WITT
BATH
WOOD-HULL
Morrice
Perry
PERRY
ANTRIM
Byron
BURNS
Grand Ledge
ONEIDA
EATON CO.

SAGINAW COUNTY

190,752

HOUSE

See Map – City of Saginaw, next page

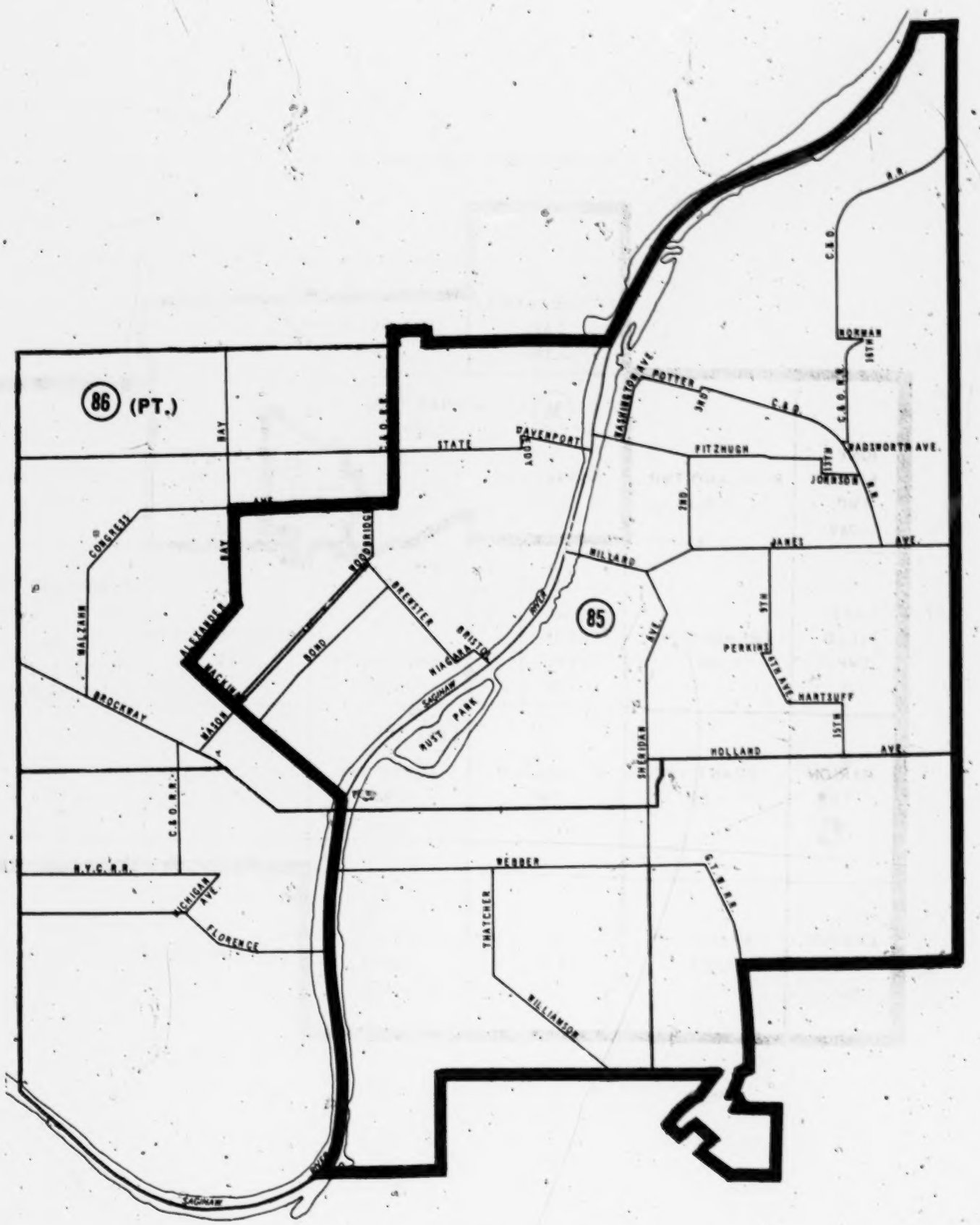


177a

SAGINAW CITY

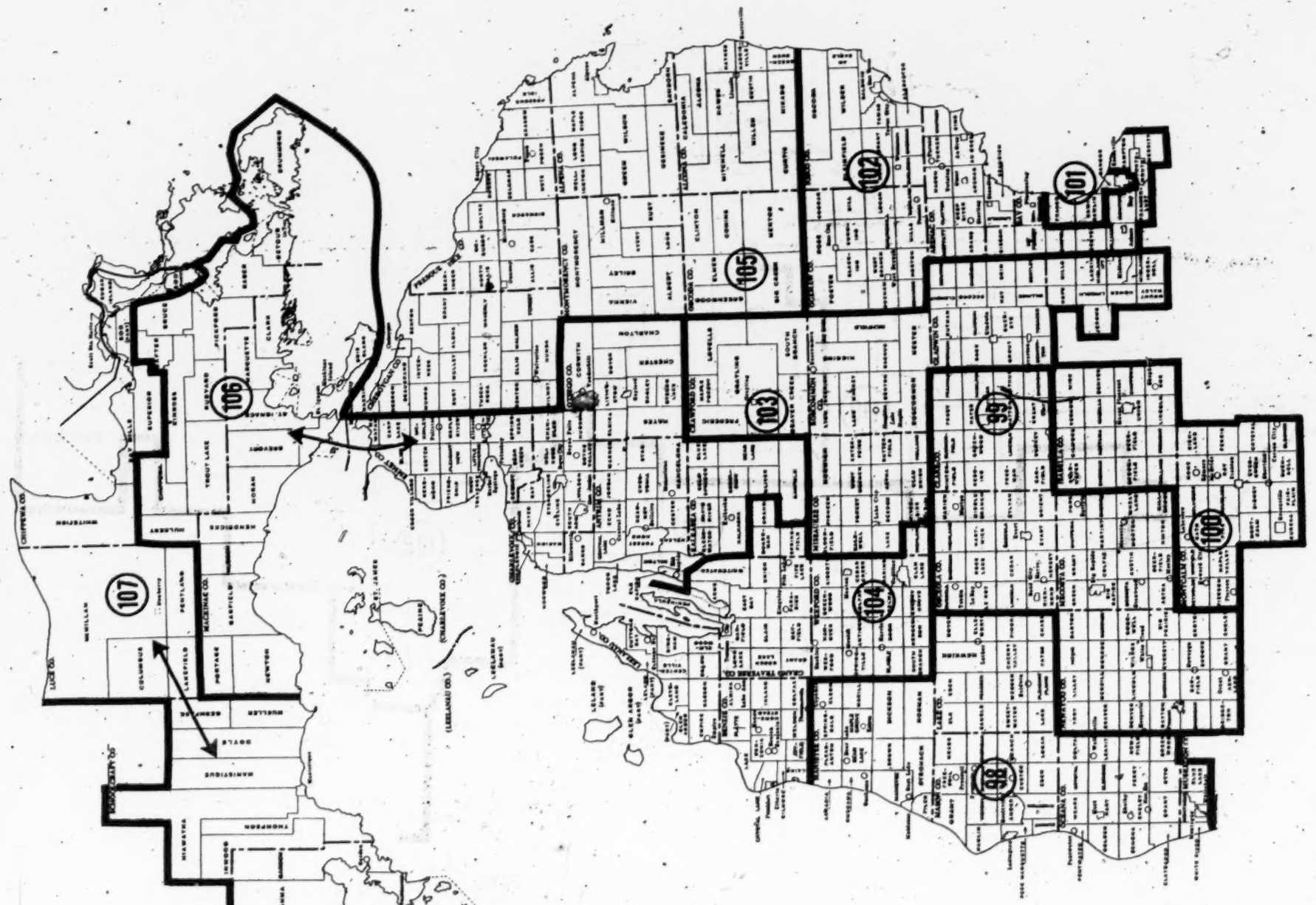
98,265

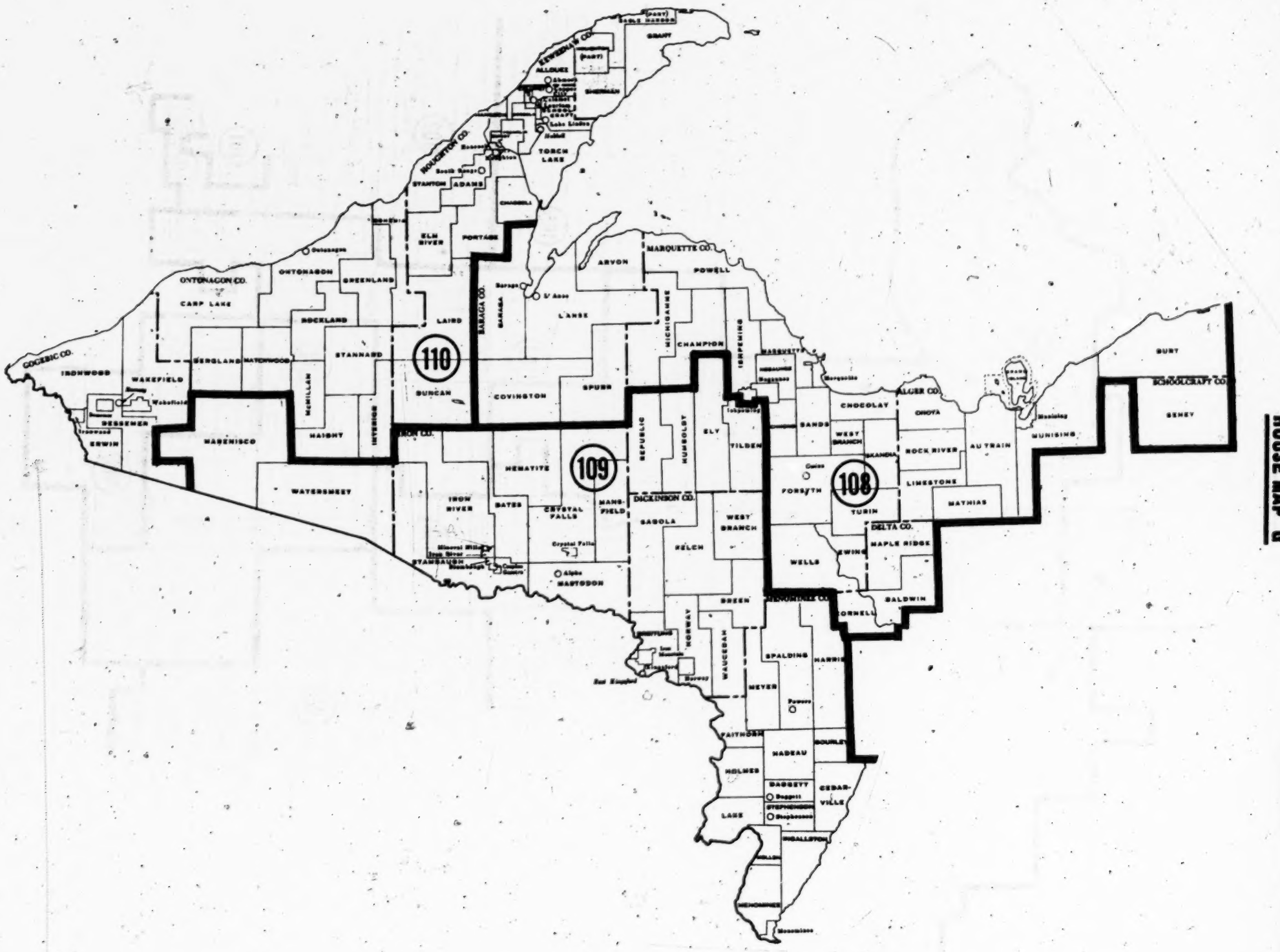
HOUSE



178a

HOUSE MAP F





HOUSE MAP G

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PAGE

District Number	*House Description*
1.	From Wayne County the township of Grosse Pointe and the cities of Harper Woods, Grosse Pointe Woods, Grosse Pointe Farms, Grosse Pointe, and that part of Grosse Pointe Park north of Jefferson Avenue.
2.	From Wayne County the Cities of Hamtramck and Highland Park.
3.	From Wayne County, that part of Grosse Pointe Park south of Jefferson Avenue and that part of Detroit beginning at the eastern city limits at the Detroit River west along the Detroit River to Parkview, north on Parkview to Jefferson, east on Jefferson to Hurlbut, north on Hurlbut to Kercheval Avenue, west on Kercheval Avenue to Fischer, north on Fischer to Vernor, east on Vernor to McClellan, north on McClellan to Mack, east on Mack to Hart, south on Hart to Goethe, west on Goethe to Lycaste, south on Lycaste to Vernor, east on Vernor to Chalmers, south on Chalmers to Kercheval, east on Kercheval to the Detroit city limits, south along the city limits to Jefferson.
4.	From the eastern Detroit city limits at Kercheval west along Kercheval to Chalmers, north on Chalmers to Vernor, west on Vernor to Lycaste, north on Lycaste to Goethe, east on Goethe to Hart, north on Hart to Mack, east on Mack to Conner, north on Conner to the Edsel Ford Expressway, east along the Edsel Ford to Morang, south along Morang to Chester Avenue, east on Chester to the Detroit city limits, south and west along the city limits to Kercheval.
5.	From the eastern city limits of Detroit west along Chester Avenue to Morang, north along Morang to the Edsel Ford Expressway, west along Edsel Ford to Conner, north on Conner to Harper, west along Harper to Gratiot, northeast along Gratiot to Cedar.

District Number *House Description*

Grove, east on Cedar Grove to Chalmers, north on Chalmers to Seven Mile Road, east on Seven Mile to Kelly, north on Kelly to the Detroit city limits, southeast along the city limits to Chester Avenue.

6. From the eastern city limits of Detroit south on Kelly Avenue to Seven Mile Road, west on Seven Mile to Chalmers Avenue, south on Chalmers to Cedar Grove, west on Cedar Grove to Gratiot, southwest on Gratiot to Gitre, northwest on Gitre to McNichols Road, west along McNichols to Portlance continuing west on Portlance to Conner, north on Conner to McNichols Road, west on McNichols to Mt. Elliott Avenue, north on Mt. Elliott to Outer Drive, west on Outer Drive to Eureka Avenue, north on Eureka Avenue to the Detroit city limits to Kelly Avenue.

7. That part of Detroit beginning at the intersection of Gitre and Gratiot, northwest along Gitre to McNichols Road, west along McNichols into Portlance continuing west on Portlance to Conner, north on Conner to McNichols, west on McNichols to Conant Avenue, south on Conant to Davison, west on Davison to the G.T.W. Railway, south on the G.T.W. to the northern city limits of Hamtramck, east, south and west along the city limits of Hamtramck to Joseph Campau, south along Joseph Campau to Griffin, east on Griffin to Moran, south on Moran to Milwaukee Avenue, east on Milwaukee to Mt. Elliot, south on Mt. Elliot to Harper, east on Harper to Gratiot, northeast on Gratiot to Gitre.

8. That part of Detroit beginning at the intersection of Conner and Harper Avenues, west on Harper to Field Avenue, south on Field to Medbury, west on Medbury to Frontenac, south on Frontenac to Grand Blvd. and west on Grand Boulevard to Mt. Elliot,

District Number *House Description*

south on Mt. Elliot to Mack Avenue, east on Mack to Conner, north on Conner to Harper.

9. That part of the City of Detroit beginning at intersection of McClellan and Mack Avenues, west along Mack to Mt. Elliott, north on Mt. Elliott to Gratiot, southwest along Gratiot to Hastings, north on Hastings to Adams, west on Adams to Beaubien, south on Beaubien to Monroe, east on Monroe to Hastings, south on Hastings to Lafayette, east on Lafayette to Dequindre, south on Dequindre to the Detroit River, east along the Detroit River to Parkview (Belle Isle Park is included), north on Parkview to Jefferson, east on Jefferson to Hurlbut, north on Hurlbut to Kercheval, west on Kercheval to Fischer, north on Fischer to Vernor, east on Vernor to McClellan, north on McClellan to Mack Avenue.

10. That part of the City of Detroit beginning at the intersection of Harper and Field Avenues, west along Harper Avenue to Mt. Elliot, north on Mt. Elliot to Milwaukee Avenue, west on Milwaukee to Moran, north on Moran to Griffin, west on Griffin to Chene, south on Chene to the Edsel Ford Expressway, continuing west on the Edsel Ford to Woodward, south on Wooward to Palmer Avenue, east on Palmer to Beaubien, south on Beaubien to Adams, east on Adams to Hastings, south on Hastings to Gratiot, northeast on Gratiot to Mt. Elliot, north on Mt. Elliot to Grand Boulevard, east on Grand Boulevard to Frontenac, north on Frontenac to Medbury, east on Medbury to Field Avenue, north on Field to Harper Avenue.

11. That part of Detroit beginning at the intersection of Palmer and Beaubien, west along Palmer to Woodward Avenue, north on Woodward to the Edsel Ford Expressway, west on the Edsel Ford to Trumbull, south on Trumbull to Temple, west on Temple to

District Number	*House Description*
	Wabash, south on Wabash to Bagley, west on Bagley to the New York Central Railroad, south on the New York Central to Howard, west on Howard to Vermont, south on Vermont to Jefferson, east on Jefferson to Twelfth, south on Twelfth to the Detroit River, east along the Detroit River to Dequindre, north on Dequindre to Lafayette, west on Lafayette to Hastings, north on Hastings to Monroe, west on Monroe to Beaubien, north on Beaubien to Palmer Avenue.
12.	That part of Detroit beginning at the interesection of Webb Avenue and Twelfth, south of Twelfth to Calvert, east on Calvert to Woodrow Wilson, south on Woodrow Wilson to Seward, east on Seward to Poe, south on Poe to W. Grand Blvd., west on W. Grand Blvd. to Holden, southeast on Holden to Avery, south on Avery to Marquette, east on Marquette to Commonwealth, south on Commonwealth to the New York Central Railroad, northeast on the New York Central to Trumbull, south on Trumbull to the Edsel Ford Expressway, east on the Edsel Ford to Chene, northeast on Chene to Joseph Campau, north on Joseph Campau to Hamtramck, west and north along the city limits of Hamtramck to the southern limits of Highland Park, west along the city limits of Highland Park to Webb Avenue, west on Webb to Twelfth.
13.	From the northern city limits of Detroit at Eureka Avenue west along the city limits to the G.T.W. railroad, south along the G.T.W. Railroad to Cameron, south along Cameron to the Highland Park city limits, east and south along the Highland Park city limits to Davison Avenue, east on Davison to Conant, north on Conant to McNichols, east on McNichols to Mt. Elliot, north on Mt. Elliot to Outer Drive, west on Outer Drive to Eureka Avenue, north on Eureka Avenue to the Detroit city limits.

District Number *House Description*

14. From the northern city limits of Detroit at Livernois Avenue, south along Livernois to the P.A. and D.T. Railroad, east along the P.A. and D.T. Railroad to Dexter Boulevard, south along Dexter to Buena Vista, east along Buena Vista to Linwood, south on Linwood to Monterey, east on Monterey to La Salle Boulevard, north on La Salle to Richton Avenue, east along Richton to Fourteenth, south on Fourteenth to Elmhurst Avenue, east on Elmhurst to Twelfth, north on Twelfth to Buena Vista, east on Buena Vista to Highland Park, north and east along the Highland Park city limits to Cameron, north on Cameron to the G.T.W. Railroad, north on the G.T.W. Railroad to the Detroit city limits, west along the Detroit city limits to Livernois.

15. From the northern city limits of Detroit at Livernois Avenue, west along the city limits to Greenfield Avenue, south along Greenfield to Midland, east on Midland to Ardmore Avenue, north on Ardmore to Puritan Avenue, east on Puritan to Meyers Road, north on Meyers to the James Couzens Highway, northwest on James Couzens to McNichols, east on McNichols to Livernois Avenue, north on Livernois to the city limits.

16. From the northern city limits of Detroit at Greenfield Avenue, west and south along the city limits to Grand River Avenue, southeast on Grand River to Evergreen Avenue, north on Evergreen to McNichols Road, east on McNichols to Southfield Road, north on Southfield to Curtis Avenue, east on Curtis Avenue to Green field Avenue, north on Greenfield to the Detroit city limits.

17. That part of Detroit beginning at the interesection of Greenfield Avenue and Curtis Avenue, west on Curtis to Southfield Road, south on Southfield to

District Number *House Description*

McNichols Road, west on McNichols to Evergreen Avenue, south on Evergreen to Grand River Avenue, northwest on Grand River to the Detroit city limits, south and east along the Detroit city limits to Fenkell Avenue, east on Fenkell to Lahser Avenue, south on Lahser and W. Outer Drive to Acacia Avenue, east on Acacia to Kentfield Avenue, north on Kentfield to Lyndon Avenue, east on Lyndon to Evergreen Avenue, south on Evergreen to Acacia Avenue, east on Acacia to Greenfield Avenue, north on Greenfield to Grand River Avenue, southeast on Grand River to Ardmore Avenue, north on Ardmore to Midland, west on Midland to Greenfield Avenue, and north on Greenfield to Curtis Avenue.

18. From the western city limits of Detroit at Fenkell Avenue, south and east along the city limits to Southfield Road, north along Southfield to Joy Road, east on Joy to the C. and O. Railroad, northwest along the C. and O. to Faust Avenue, west on Faust to Fitzpatrick Avenue, northwest on Fitzpatrick to Elmira Avenue, west on Elmira to Evergreen Avenue, north on Evergreen to Lyndon Avenue, west on Lyndon to Kentfield, south on Kentfield to Acacia Avenue, west on Acacia to W. Outer Drive, north on W. Outer Drive and Lahser to Fenkell Avenue, west on Fenkell to the western city limits of Detroit.

19. That part of Detroit beginning at the intersection of Grand River and Fullerton Avenues, west along Fullerton to Ardmore Avenue extended, north on Ardmore to Grand River Avenue, northwest on Grand River to Greenfield Avenue, south on Greenfield to Acacia Avenue, west on Acacia to Evergreen Avenue, south on Evergreen to Elmira Avenue, east on Elmira to Fitzpatrick Avenue, southeast on Fitzpatrick to Faust Avenue, northeast on Faust to the C. & O.

District Number — *House Description*

Railroad, southeast on the C. & O. Railroad to Joy Road, west on Joy to Southfield Road, south on Southfield to Paul Avenue, east on Paul to Greenfield Avenue, north on Greenfield to Tireman Avenue, east on Tireman to the P.A. and D.T. Railroad, north along the P.A. and D.T. Railroad to Plymouth Road, east on Plymouth Road to Meyers Road and north on Meyers to Fullerton Avenue.

20. That part of Detroit beginning at the intersection of Fullerton and Ardmore extended, north on Ardmore to Puritan Avenue, east on Puritan to Meyers Road, north on Meyers to the James Couzens Highway, north on James Couzens to McNichols Road, east on McNichols Road to Livernois Avenue, south on Livernois to Grand River Avenue, northwest on Grand River to Fullerton Avenue, and west on Fullerton to Ardmore Avenue extended.

21. That part of Detroit beginning at the intersection of Grand River and Quincy Avenues in Detroit northwest on Grand River to Meyers Road, south on Meyers Road to Plymouth Road, west on Plymouth to the P.A. and D.T. Railroad, south on the P.A. and D.T. Railroad to the Detroit city limits, east and south along the city limits to Michigan Avenue, east on Michigan to Central Avenue, north on Central to McGraw Avenue, east on McGraw to the C. and O. Railroad, north on the C. and O. to Tireman Avenue, east on Tireman to Beechwood, north on Beechwood to Maplewood Avenue, and east on Maplewood to Grand River Avenue.

22. That part of Detroit beginning at the intersection of Grand River and Livernois Avenues in Detroit, north on Livernois to the P.A. and D.T. Railroad, east on the P.A. and D.T. Railroad to Dexter Boulevard, south on Dexter to Buena Vista Avenue, east

District Number	*House Description*
	on Buena Vista to Linwood Avenue, south on Linwood to Monterey Avenue, east on Monterey to LaSalle Boulevard, north on LaSalle to Richton Avenue, east on Richton to Fourteenth, south on Fourteenth to Elmhurst, east on Elmhurst to Twelfth, north on Twelfth to Buena Vista, east on Buena Vista to the Highland Park city limits, south along the city limits to Webb Avenue, west on Webb Avenue to Twelfth, south on Twelfth to Calvert, east on Calvert to Woodrow Wilson Avenue, south on Woodrow Wilson to Euclid, west on Euclid to Forteenth Avenue, north on Fourteenth to Pingree, west on Pingree to Lawton, north on Lawton to Joy west on Joy to Grand River, and northwest on Grand River to Livernois.
23.	That part of Detroit beginning at the intersection of Grand River Avenue and Joy Road, southeast on Grand River to Maplewood Avenue, west on Maplewood to Beechwood Avenue, south on Beechwood to Tireman Avenue continuing west on Tireman to the C. and O. Railroad, south on the C. and O. Railroad to Warren Avenue, east on Warren to Roosevelt Avenue, north on Roosevelt to the Edsel Ford Expressway, east on the Edsel Ford to Trumbull Avenue, north on Trumbull to the New York Central Railroad, southwest on the New York Central to Commonwealth, north on Commonwealth to Marquette Avenue, west on Marquette to Avery Avenue, north on Avery to Holden Avenue, northwest on Holden Avenue to W. Grand Blvd. east on W. Grand Blvd. to Poe Avenue, north on Poe to Seward Avenue, west on Seward to Woodrow Wilson Avenue, north on Woodrow Wilson to Euclid Avenue, west on Euclid to Fourteenth Avenue, north on Fourteenth to Pingree Avenue, west on Pingree to Lawton Avenue, north on Lawton to Joy Road and west on Joy to Grand River Avenue.

District Number — *House Description*

24. That part of Detroit beginning at the interesection of Warren Avenue and Thirtieth (30th), south on Thirtieth (30th) to Buchanan, east on Buchanan to Twenty-ninth (29th), south on Twenty-ninth (29th) to Michigan Avenue, east on Michigan to the New York Central Railroad, southwest along the New York Central Railroad to the M.C. Railroad, east on the M.C. Railroad to McKinstry Avenue, south on McKinstry to Fort, west on Fort to Junction Avenue, south on Junction to Jefferson Avenue, east on Jefferson to Grand Boulevard, south on Grand Boulevard to the Detroit River, east on the Detroit River to Twelfth, north on Twelfth to Jefferson Avenue, west on Jefferson to Vermont, north on Vermont to Howard, east on Howard to the New York Central Railroad and then northwest on the New York Central to Bagley Avenue, east on Bagley to Wabash Avenue, north on Wabash to Temple, east on Temple to Trumbull, north on Trumbull to the Edsel Ford Expressway, west on Edsel Ford to Roosevelt Avenue, south of Roosevelt to Warren Avenue, and west on Warren to Thirtieth (30th).

25. That part of Detroit beginning at the intersection of Warren and Thirtieth (30th), west on Warren Avenue to the C. and O. Railroad, south on the C. and O. Railroad to McGraw Avenue, west on McGraw to Central Avenue, south on Central to Michigan Avenue, west on Michigan to the Detroit city limits, south along the city limits to River Rouge then south on River Rouge to Fort Street, east on Ford to Woodmere Avenue, north on Woodmere to Longworth, east on Longworth to Springwells, north on Springwells to Pershing, east on Pershing to Central Avenue, south along Central to the New York Central Railroad, northeast on the New York Central

District Number *House Description*

Railroad to Beard Avenue, south on Beard to Fort Street, east on Fort to Cavalry to Jefferson, east on Jefferson to Junction, north on Junction to Fort Street, east on Fort to McKinstry Avenue, north on McKinstry to the Michigan Central Railroad, west along the Michigan Central to the New York Central Railroad, northeast on the New York Central to Michigan Avenue, west on Michigan to Twenty-ninth (29th), north on Twenty-ninth (29th) to Buchanan Avenue, west on Buchanan to Thirtieth (30th), and north on Thirtieth (30th) to Warren Avenue.

26. That part of Detroit beginning at the intersection of West Jefferson Avenue and Grand Boulevard, west on Jefferson to Cavalry, north on Cavalry to Fort Street, west on Fort Street to Beard Avenue, north on Beard to the New York Central Railroad, southwest along the New York Central to Central Avenue, north on Central to Pershing Avenue, west on Pershing to Springwells Avenue, south on Springwells to Longworth, west on Longworth to Woodmere Avenue, south on Woodmere to Fort Street, west on Fort to River Rouge, northwest on River Rouge to the Detroit city limits, west, south, northeast, east, north and east along the city limits to the Detroit River, northeast along the Detroit River to Grand Boulevard and north on Grand Boulevard to Jefferson Avenue in the city of Detroit; also all of the city of River Rouge; also all of the city of Ecorse except that part east of the Michigan Central Railroad—all of the above in Wayne County.

27. From Wayne County, that part of Ecorse east of the Michigan Central Railroad; all of the city of Wyandotte except that part lying south of Eureka Avenue and east of the Michigan Central Railroad; and that part of Lincoln Park city east of a line running south

District Number	*House Description*
	from the northern city limits along the Pennsylvania Railroad to Southfield Road, east along Southfield to Fort and south on Fort to the southern city limits.
28.	From Wayne County the cities of Southgate, Riverview and Gibralter and Grosse Ile Township; also that part of Lincoln Park lying south of Buckingham and west of Fort Street; that part of Wyandotte lying south of Eureka and east of Michigan Central Railroad; and all of Trenton except that part lying west of Fort Street and north of West Road.
29.	In Wayne County the townships of Taylor and Brownstown and that part of the city of Trenton west of Fort Street and north of West Road.
30.	In Wayne County the cities of Melvindale and Allen Park; that part of the city of Dearborn lying within a line beginning at the southern city limits and River Rouge, north and west along River Rouge to Michigan Central Railroad, east along Michigan Central Railroad to Miller, south on Miller to Dix, southwest on Dix to River Rouge, that part of Lincoln Park lying north and west of a line beginning at western city limits and Buckingham, east on Buckingham to Fort Street, north on Fort Street to Southfield, northwest on Southfield to Pennsylvania Railroad and northeast on Pennsylvania Railroad to the northern city limits.
31.	In Wayne County that part of the City of Dearborn lying within a line beginning at the southern city limits of the City of Dearborn and Grindley Park-Outer Drive, north on Grindley Park-Outer Drive to northern city limits of the city of Dearborn, east, north and south along northern and eastern boundaries of city of Dearborn to Dix, northeast on Dix to Miller Road, north on Miller Road to Michigan Central Railroad, west on Michigan Central Railroad

District Number	*House Description*
	to River Rouge, south along River Rouge to the western boundary of city of Allen Park, south along the western boundary of the city of Allen Park to Southfield, north on Southfield to Rotunda, west on Rotunda to Pelham, south on Pelham to southern boundary of City of Dearborn, west to point of beginning.
32.	In Wayne County, all of Dearborn Township, that part of the City of Dearborn Heights lying south of Cherry Hill Road; that part of the city of Dearborn lying south of Cherry Hill Road and west of Grindley Park-Outer Drive, and that part of the City of Dearborn lying within a line beginning at southern limits of the City of Dearborn and Pelham Road, north to Rotunda, east to Southfield and south to city limits.
33.	In Wayne County that part of Dearborn Heights north of Cherry Hill Road; that part of the city of Dearborn lying north of Cherry Hill Road and west of Outer Drive; that part of Nankin Township east of Farmington Road and north of Garden City; and that part of Livonia lying south of the C. and O. Railroad between Merriman and Middlebelt Roads.
34.	In Wayne County, all of Redford Township.
35.	In Wayne County, the Township of Northville, the city of Northville and all of Livonia except that portion south of the C. and O. Railroad between Merriman and Middlebelt Roads.
36.	In Wayne County, all of Canton and Plymouth Townships and all of the cities of Plymouth and Garden City; and all of Nankin Township north of Cherry Hill Road and west of the western city limits of Garden City and west of Farmington Road.

District Number	*House Description*
37.	In Wayne County, all of Nankin Township south of Cherry Hill Road, and the City of Wayne.
38.	In Wayne County, the townships of Huron, Romulus, Sumpter, and Van Buren, and the City of Belleville. In Monroe County the townships of Ash, Berlin, Dundee, Exeter, Ida, London, Milan, Raisinville, and Summerfield.
39.	In Monroe County, the townships of Whiteford, Bedford, Erie, La Salle, Monroe and Frenchtown and the City of Monroe.
40.	All of Lenawee County except the townships of Franklin, Cambridge, and Woodstock. District 40 includes all of the village of Manitou Beach-Devils Lake but excludes all of the village of Addison.
41.	All of Branch and Hillsdale Counties and Woodstock Township in Lenawee County excluding the village of Manitou Beach-Devils Lake. (District 41 includes all of the village of Addison.)
42.	From St. Joseph County the townships of Flowerfield, Fabius, Constantine, Mottville, Florence, White Pigeon and Sturgis; and the cities of Three Rivers, and Sturgis; from Cass County, the townships of Volinia, Marcellus, Newberg, Porter, Calvin, Jefferson, Howard, Milton, Ontwa and Mason; from Berrien County the town of Niles and the city of Niles.
43.	From Cass County the townships of LaGrange, Penn, Pokagon and Wayne; from Berrien County the townships of Baroda, Berrien (except the village of Eau Claire), Bertrand, Buchanan, Chickaming, Galien, Lake, Lincoln, New Buffalo, Oronoko, St. Joseph, Three Oaks, and Weesaw and the cities of Bridgman, Buchanan, and St. Joseph.

District Number	*House Description*
44.	From Berrien County the townships of Bainbridge, Benton, Coloma, Hager, Pipestone, Royalton, Sodus, and Watervliet and the cities of Benton Harbor, Coloma, and Watervliet, and the village of Eau Claire. From Cass County the Township of Silver Creek and the city of Dowagiac.
45.	From St. Joseph County the townships of Burr Oak, Colon, Fawn River, Leonidas, Lockport, Mendon, Nottawa, Park and Sherman; from Calhoun County, the townships of Athens, Battle Creek and LeRoy and the city of Springfield; from Kalamazoo County the townships of Brady, Charleston, (except the village of Augusta,) Climax, Comstock, Pavilion, Prairie Ronde, Schoolcraft, Texas, and Wakeshma, and the city of Galesburg.
46.	All of the City of Kalamazoo except that portion northeast of a line beginning at the north city limits and the Kalamazoo River, south along the Kalamazoo River to East Kalamazoo, west to Michigan Avenue, southwest to Portage, southeast to the New York Central Railroad, south to Lake, east to Division, south to the Pennsylvania Railroad, southeast to Fulford, south to Reed, east to the City limits.
47.	From Kalamazoo County, the townships of Alamo, Cooper, Richland, Ross, (including all of the Village of Augusta), Oshtemo, Kalamazoo and Portage and the City of Parchment, and that portion the city of Kalamazoo lying northeast of a line beginning at the north city limits and the Kalamazoo River, south along the Kalamazoo River tot East Kalamazoo, west to Michigan Avenue, southwest to Portage, southeast to the New York Central Railroad, south to Lake, east to Division, south to the Pennsylvania Railroad, southeast to Fulford, south to Reed, east to the City limits.

District Number	*House Description*
48.	From Calhoun County the townships of Bedford, Convis, Emmett, and Pennfield, and the city of Battle Creek.
49.	From Calhoun County the townships of Albion, Burlington, Clarendon, Eckford, Homer, Newton, and Tekonsha; from Jackson County the townships of Parma except village of Parma, Concord, Pulaski, Spring Arbor, Hanover, Summit, Liberty, Columbia, Napoleon, Norvell, Grass Lake, Waterloo, Leoni and Henrietta; from Lenawee County the township of Cambridge.
50.	From Jackson County the townships of Blackman, Rives, and Sandstone and the city of Jackson, and all of the village of Parma.
51.	All of Livingston County: from Lenawee County the township of Franklin; from Washtenaw County the townships of Lyndon, Dexter, Sylvan, Lima, Scio, Sharon, Freedom, Lodi, Manchester, Bridgewater, Saline and Pittsfield and the city of Saline.
52.	From Washtenaw County the townships of Augusta, Northfield, Salem, Superior, Webster, York and Ypsilanti, and the city of Ypsilanti.
53.	From Washtenaw County the township of Ann Arbor and the city of Ann Arbor.
54.	All of Van Buren County and from Allegan County the townships of Laketown, Saugatuck, Manlius, Ganges, Clyde, Casco, Lee, Cheshire, Trowbridge, Allegan, Valley and Watson and the city of Allegan.
55.	From Allegan County the townships of Dorr, Fillmore, Gunplain, Heath, Hopkins, Leighton, Martin, Monterey, Otsego, Overisel, Salem and Wayland, and the cities of Otsego and Plainwell; from Barry County the townships of Baltimore, Barry, Hope, Johnstown,

District Number	*House Description*
	Orangeville, Prairieville, and Yankee Springs. From Ottawa county the townships of Jamestown and Zeeland. (From Allegan and Ottawa counties the city of Holland.)
56.	All of Eaton County except the township of Oneida and the city of Grand Ledge; from Calhoun County the townships of Clarence, Fredonia, Lee Marengo, Marshall and Sheridan and the cities of Albion and Marshall.
57.	From Ingham County wards one and four from the city of Lansing, and all of Lansing township except that part lying south of the Red Cedar River, southeast of Lansing.
58.	From Ingham County wards 2 and 3 of the city of Lansing, that part of Lansing township lying south of the Red Cedar River, southeast of Lansing and the townships of Alaiedon, Aurelius, and Delhi.
59.	From Ingham County the townships of Meridian, Williamston, Locke, Wheatfield, Leroy, Vevay, Ingham, White Oak, Onondaga, Leslie, Bunker Hill, and Stockbridge and the cities of E. Lansing, Williamston and Mason; from Jackson County the townships of Springport and Tompkins.
60.	From Genesee County the townships of Argentine, Fenton and Mundy; from Oakland County, the townships of Brandon, Commerce, Groveland, Highland, Holly, Lyon, Milford, Novi, and Rose and the cities of Northville, South Lyon, Walled Lake, and Wixom.
61.	From Oakland County, the townships of Independence, Springfield, Waterford, and White Lake, and the City of Sylvan Lake.
62.	From Oakland County, the city of Pontiac except that portion lying south and east of a line beginning at

District Number *House Description*

the eastern boundary of Pontiac and Featherstone, west to east Montcalm Blvd. south to Auburn Avenue, west to Parke, south to the Detroit-Grand Haven-Milwaukee Railroad, southeast to the southern city limits.

63. From Oakland County, the townships of Addison, Avon, Oakland, Orion, Oxford and Pontiac and that part of the city of Pontiac lying south and east of a line beginning at the eastern boundary of Pontiac and Featherstone, west to east Montcalm Blvd., south to Auburn Avenue west to Parke, south to the Detroit-Grand Haven-Milwaukee Railroad, southeast to the southern city limits, and that part of the city of Troy lying north and west of a line beginning at the western city limits of the City of Troy running east on Big Beaver Road to Livernois Road, north on Livernois to Long Lake Road and east on Long Lake Road to the city limits.

64. From Oakland County, the townships of West Bloomfield and Farmington and the cities of Farmington, Lathrup Village, Keego Harbor and the city of Southfield except that part south of Twelve Mile Road and east of Lahser Road.

65. From Oakland County, the townships of Bloomfield and Southfield, the cities of Birmingham and Bloomfield Hills and that part of the city of Royal Oak enclosed by a line beginning at the Northern City limits and Woodward, southeast on Woodward to 13 Mile, east on 13 Mile to Main, north on Main to the northern city limits, west and north along the northern city limits to the point of beginning.

66. From Oakland County, the cities of Clawson and Madison Heights, and that part of Hazel Park north of Nine Mile Road, also that part of the city of Troy lying south of a line beginning at the western bound-

District Number *House Description*

ary line of the City of Troy and running east on Big Beaver Road to Livernois Road, north on Livernois to Long Lake Road and east on Long Lake Road to the city limits.

67. From Oakland County, all of Royal Oak Township and all of the city of Berkley, and that part of the city of Southfield south of Twelve Mile Road and east of Lahser Road and all of the city of Oak Park except that part north of Nine Mile Road and east of Coolidge Highway.

68. From Oakland County all of the city of Royal Oak except that part enclosed by a line beginning at the northern city limits and Woodward, southeast on Woodward to 13 Mile, east on 13 Mile to Main, north on Main to the northern city limits, west and north along the northern city limits to the point of beginning.

69. From Oakland County, the cities of Ferndale, Huntington Woods, and Pleasant Ridge, and that part of the city of Hazel Park south of Nine Mile Road, and that part of the city of Oak Park north of Nine Mile Road and east of Coolidge Highway.

70. From Macomb County, that part of the city of Warren enclosed by a line beginning at the eastern boundary of the city of Warren and 9 Mile Road, west to Hoover, north to Stephens, west to eastern boundary of the city of Centerline, north to 11 Mile Road, east to the eastern boundary of the city of Warren, north to 12 Mile Road, west to the New York Central Railroad, north to the northern boundary of the city of Warren, thence west, south, east, and north following the city limits to point of beginning

71. From Macomb County, the townships of Armada, Bruce, Macomb, Ray, Shelby, Sterling, and Washington and the city of Utica and that portion of Clinton Township north of Fifteen Mile Road.

District Number	*House Description*
72.	From Macomb County, the cities of Fraser and Roseville, and that part of Clinton Township south of Fifteen Mile Road and that part of the city of Warren north of Twelve Mile Road and east of the New York Central Railroad; and from the city of St. Clair Shores, that part west of Harper lying between the Eleven and Twelve Mile Roads.
73.	From Macomb County, the cities of Centerline and East Detroit, and that part of the city of Warren lying south of Eleven Mile Road and east of a line running south along the eastern city limits of Centerline to Stephens Road, east on Stephens to Hoover Road, south on Hoover to Nine Mile Road and east on Nine Mile to the Warren city limits.
74.	From Macomb County, all of the city of St. Clair Shores except that part lying west of Harper between Eleven Mile Road and Twelve Mile Road and the township of Lake.
75.	From Macomb County, the townships of Chesterfield, Harrison, Lenox, and Richmond, and the city of Mt. Clemens. From St. Clair County, all of the townships of Casco, Clay, Columbus, Cottrellville, and Ira and the city of Marine City. From St. Clair and Macomb Counties the cities of Memphis and New Baltimore.
76.	From St. Clair County, the townships of China, Clyde, East China, Fort Gratiot, Kimball, Port Huron, and St. Clair, and the cities of Marysville, Port Huron, and St. Clair.
77.	From St. Clair County the townships Lynn, Brockway, Greenwood, Grant, Burtchville, Mussey, Emmett, Kenockee, Berlin, Riley and Wales and the city of Yale; all of Sanilac County; all of Huron County except the townships of Brookfield, Fairhaven, Grant, Oliver, Sebewaing and Winsor.

District Number	*House Description*
78.	All of Lapeer County; from Tuscola County the townships of Almer, Columbia, Dayton, Elkland, Ellington, Elmwood, Fremont, Kingston, Koylton, Millington, Novesta, Watertown and Wells; from Huron County the townships of Brookfield, Fairhaven, Grant, Oliver, Winsor and Sebewaing.
79.	From Genesee County, the townships of Atlas, Burton, Davison, Forest, Grand Blanc, Richfield, Thetford, and Vienna, and the cities of Clio, Davison and Grand Blanc.
80.	From Genesee County all of Genesee Township and all of Flint Ward 1, and all of Flint Ward 4 except that part bounded by a line beginning at Flint's eastern city limits and running west on Delaware to Dexter, north on Dexter to Dakota, west on Dakota to Averill, south on Averill to Delaware, west on Delaware to Franklin, south on Franklin to Davison, east on Davison to Dort, south on Dort to Court, and east on Court to the city limits.
81.	From Genesee County and the city of Flint Wards 7 and 9 and all of Ward 8 except that part lying south of the Flint River, west of Bartlett and Downey and north of Corunna Road; also that part of Ward 6 bounded by a line running east along the Flint River from Chevrolet Avenue to Prospect, north on Prospect to Third, east on Third to Begole, north on Begole to Fifth, west on Fifth to Stevenson, north on Stevenson to Flushing Road, west on Flushing Road to Perry, west on Perry to Dupont, south on Dupont to Chevrolet, and south Chevrolet to the Flint River, plus that part of Ward 4 bounded by a line beginning at Flint's eastern city limits and running west on Delaware to Dexter, north on Dexter to Dakota, west on Dakota to Averill, south on Averill to Delaware, west on Delaware to Franklin, south on Franklin to Davison, east on Davison, east on Davison to Dort, south on Dort to Court, and east on Court to the city limits.

District Member — *House Description*

82. From Genesee County and the city of Flint all of Wards 2, 3 and 5, and all of Ward 6 except that part contained within a line running east along the Flint River from Chevrolet Avenue to Prospect, north on Prospect to Third, east on Third to Begole, north on Begole to Fifth, west on Fifth to Stevenson, north on Stevenson to Flushing Road, west on Flushing Road to Perry, west on Perry to Dupont, south on Dupont to Chevrolet and south on Chevrolet to Flint River.

83. From Genesee County, all of the townships of Clayton Flint, Flushing, Gaines, Montrose and Mount Morris, and all of the cities of Mount Morris and Swartz Creek; also that part of Flint west of Downey and Bartlett between the Flint River and Corunna Road.

84. From Tuscola County, the townships of Wisner, Akron, Fairgrove, Gilford, Denmark, Juanita, Vassar, Tuscola, Indianfields and Arbela and the city of Vassar and all of Saginaw County except the townships of Buena Vista, Carrollton, Kochville, Saginaw, Thomas, Tittabawasse and Zilwaukee and the city of Saginaw.

85. From Saginaw County, all of the city of Saginaw except that area west of a line from the northern city limits south along the C. and O. Railroad to Congress, west on Congress to Bay, south on Bay to Alexander, southwest on Alexander to Mackinaw, southeast on Mackinaw to the Saginaw River and south along the Saginaw River is to the city limits.

86. From Saginaw County the townships of Buena Vista, Carrollton, Kochiville, Saginaw, Thomas, Tittabawasse and Zilwaukee and that part of the city of Saginaw lying west of a line beginning at the northern city limits south along the C. and O. Railroad to Congress, west on Congress to Bay, south on Bay to

District Member	*House Description*
	Alexander, southwest on Alexander to Mackinaw, southeast on Mackinaw to the Saginaw River and south along the Saginaw River to the city limits.
87.	All of Shiawassee County; from Clinton County the townships of Bath, Bingham, DeWitt, Olive, Ovid, and Victor and the city of St. Johns.
88.	From Eaton County the township of Oneida and the city of Grand Ledge; from Clinton County the townships of Waterton, Eagle, Westphalia, Riley, Bengal, Dallas, Lebanon, Essex, Greenbush and Duplain; all of Gratiot County, from Midland County the townships of Edenville, Geneva, Greendale, Jasper, Lee, Porter, and Warren and the city of Coleman.
89.	All of Ionia County; from Barry County the townships of Thornapple, Irving, Carlton, Woodland, Rutland, Hastings, Castleton, Maple Grove and Assyria and the city of Hastings; from Kent County the townships of Bowne, Grattan, Lowell, and Vergennes and the city of Lowell.
90.	From Kent County, the townships of Ada, Algoma, Alpine, Cannon, Cascade, Courtland, Nelson, Oakfield, Plainfield, Solon, Sparta, Spencer, Tyrone and Walker and the cities of Grandville and Rockford.
91.	From Kent County, the townships of Byron, Caledonia, Gaines, Grand Rapids, and Paris; the city of East Grand Rapids, and that part of the city of Grand Rapids north of a line beginning at the western city limits and Knapp extended, and running east on Knapp extended and Knapp to Monroe, north to Sligh Boulevard, east to Plainfield, south to Arlington, and east to the city limits and that part of the city of Grand Rapids lying south and east of a line beginning at the eastern city limits and Burton Street, west to the C. and O. tracks, northwest to Eastern Avenue, south to Ardmore, east to Thelma, south to Burton,

District Member *House Description*

west to Marshall, south to Hazen, west to Eastern, south to Alger, west to Linden, south to Mulford, east to Eastern and south to the city limits.

92. From Kent County, all of the city of Grand Rapids north of a line beginning at the southwestern city limits and the Grand River, northwest along the Grand River to Hastings, east along Hastings to College Avenue, south on College to Michigan, and east on Michigan to the eastern city limits except that area in the northern part of the city north of a line beginning at the western city limits and Knapp extended and running east on Knapp extended, and Knapp to Monroe, north on Monroe to Sligh Boulevard, east on Sligh to Plainfield Avenue, south on Plainfield to Arlington and east on Arlington to the city limits.

93. From Kent County, all of that area of Grand Rapids lying south and east of a line beginning at the eastern city limits and Michigan Street and running west on Michigan to College, north on College to Hastings, west on Hastings to Ransom, south on Ransom to Fulton, east on Fulton to Jefferson, south on Jefferson to Crofton, west on Crofton to Division and south on Division to the southern city limits except that prtion lying south and east of a line beginning at the eastern city limits and Burton Street, west to the C. and O. tracks, northwest to Eastern Avenue, south to Ardmore, east to Thelma, south to Burton, west to Marshall, south to Hazen, west to Eastern, south to Alger, west to Linden, south to Mulford, east to Eastern and south to the city limits.

94. From Kent County, the city of Wyoming and that part of the city of Grand Rapids south and west of a line beginning at the southwestern city limits and the Grand River and running northeast along the Grand River to Hastings, east on Hastings to Ransom, south on Ransom to Fulton, east on Fulton to Jefferson,

District Member — *House Description*

south on Jefferson to Crofton, west on Crofton to Division and south on Division to the city limits.

95. All of Ottawa County except the townships of Jamestown and Zeeland and the city of Holland.

96. From Muskegon County the cities of Muskegon and Muskegon Heights and that portion of Muskegon Township lying south of Muskegon and west of Muskegon Heights.

97. From Muskegon County the townships of Holton, Fruitland, Dalton, Cedar Creek, Laketon, Egelston, Moorland, Casnovia, Norton, Fruitport, Sullivan, Ravenna, that portion of Muskegon Township east of the city of Muskegon and the cities of North Muskegon and Roosevelt Park.

98. From Muskegon County the townships of Blue Lake, White River, Montague, Whitehall and the cities of Montague and Whitehall; also the counties of Lake, Manistee, Mason, and Oceana.

99. The counties of Clare, Mecosta, Newaygo, and Osceola.

100. The counties of Isabella and Montcalm.

101. From Bay County the townships of Bangor, Fraser and Kawkawlin and the city of Bay City.

102. All of Bay County except the township of Bangor, Fraser, and Kawkawlin and the city of Bay City; and the counties of Arenac, Iosco, and Ogemaw.

103. From Midland County the township of Hope, Mills, Larkin, Lincoln, Jerome, Homer, Midland, Ingersoll and Mt. Haley and the city of Midland; also all of the counties of Crawford, Gladwin and Roscommon and all of the county of Missaukee except the township of Richland and the city of McBain.

District Member	*House Description*
104.	From Missaukee County the township of Richland and the city of McBain; also the counties of Benzie, Grand Traverse, Leelanau, and Wexford; and from Kalkaska County the townships of Boardman, Orange and Springfield.
105.	All of the counties of Alcona, Alpena, Cheboygan, Montmorency, Oscoda, and Presque Isle.
106.	All of Kalkaska County except the townships of Boardman, Orange and Springfield. The counties of Antrim, Charlevoix, Emmet, Mackinac, and Otsego and from Chippewa County the townships of Hulbert, Chippewa, Kinross, Trout Lake, Rudyard, Dafter, Bruce, Pickford, Raber, Detour, Drummond.
107.	All of Luce County; all of Schoolcraft County except the township of Seney; all of Delta County except the townships of Baldwin, Cornell and Maple Ridge, and from Chippewa the townships of Bay Mills, Soo, Sugar Island, Superior and Whitefish and the city of Sault Ste. Marie.
108.	From Schoolcraft County, the township of Seney; all of the counties of Alger and Baraga; all of the county of Marquette except the townships of Ely, Humboldt, Republic, and Tilden; also from the county of Delta the townships of Baldwin, Cornell and Maple Ridge.
109.	All of the counties of Dickinson, Iron, and Menominee; from Marquette County the townships of Humboldt, Republic, Ely and Tilden; from Gogebic County the townships of Marenisco and Watersmeet.
110.	The counties of Hougton, Keeweenaw, and Ontonagon, and all of Gogebic County except the townships of Marenisco and Watersmeet.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION OF INTERVENORS-APPELLEES TO DISMISS OR AFFIRM

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION OF INTERVENORS-APPELLEES TO DISMISS OR AFFIRM

MOTION TO DISMISS OR AFFIRM

Intervening defendants-appellees, August Scholle, et al., pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, move that the appeal herein

be dismissed, or that the final judgment of the Michigan Supreme Court, dated April 6, 1966, be affirmed, for the reasons that said judgment was correct, appellants fail to present a substantial federal question and said judgment rests on an adequate non-federal basis.

STATEMENT

On June 22, 1964, this Court reversed the decision of *Marshall v. Hare,* 227 F. Supp. 989 (E. D., Mich.), which had upheld (2-1) the legislative apportionment provisions of Michigan's 1963 Constitution.[1] 378 U.S. 561. In that case, these intervenors were plaintiffs.[2]

In reversing, this Court remanded to the three-judge district court, stating:

> "The judgment below is reversed. *Reynolds v. Sims,* 377 U.S. 533, *Lucas v. Forty-Fourth General Assembly of Colorado,* 377 U.S. 713. The case is remanded for further proceedings consistent with the views stated in our opinions in *Reynolds v. Sims* and in the other cases relating to state legislative apportionment decided along with *Reynolds.*"

The District Court thereafter stayed its hand in view of superseding events in the Michigan Supreme Court.

On June 22, 1964, upon this Court's reversal of *Marshall,* the Michigan Supreme Court, pursuant to Michigan Con-

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[1] These provisions are set forth in Appendix A, hereto attached.

[2] Intervenor Scholle was also the plaintiff in the earlier suit of *Scholle v. Hare,* 360 Mich. 1, 104 NW 2d 63 (1960), vacated and remanded, 369 U. S. 429 (1962), judgment for plaintiff, 367 Mich. 176, 116 NW 2d 350 (1962), cert. den. sub. nom., *Beadle v. Scholle,* 377 U S. 990 (1964).

stitution of 1963, Article IV, sec. 6, ¶7th,[3] directed Michigan's deadlocked Legislative Apportionment Commission to adopt the so-called Alternate Austin-Kleiner Plan as being that "plan [before the Court which] complie[d] most accurately with the constitutional requirements." In re Apportionment of State Legislature-1964, 373 Mich. 250, 128 N.W. 2d 722 (1964).[4]

---

[3] "If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section."

[4] The Commission had been reconvened, after *Reynolds v. Sims*, by Michigan Supreme Court orders of June 17, 373 Mich 247, 128 N.W. 2d 721, vacating an earlier, provisional districting (necessarily invalid under *Reynolds*, as later so determined by *Marshall*) and directing the Commission to adopt a plan satisfying *Reynolds*. The Commission deadlocked.

As to the appellant's comments respecting the shortness of time for Commission deliberations:

> "While the practical facts of the then existing election process timetable required prompt action by this Court and by the commission following the long awaited decisions of the United States Supreme Court in *Reynolds v. Sims*, and its accompanying cases, I agree with Justice Smith that it is something less than candor to plant a due process argument [abandoned on this appeal] on the assertion that only five days elapsed between *Reynolds v. Sims* and the decision by this Court ordering commission approval of the alternate Austin-Kleiner plan. Justice Smith in November accurately stated the facts that the commission had before it for many months before *Reynolds v. Sims* reapportionment plans based upon districts of equal population, that extended hearings lasting two full days before this Court explored population criteria for reapportionment purposes, *and that a representation was made to this Court that the commission could furnish other population based plans in 24 hours if desired.* 376 Mich. 410, 479, 480." Mr. Justice Souris, below, 377 Mich. 396, 447, 140 NW 2d 436, 455, 456 (1966). (Emphasis added).

No appeal was taken from such judgment, nor was stay sought, and the 1964 legislative elections were conducted in the Austin-Kleiner districts, and the 1965-1966 legislature so served.

In August, 1964, this action was filed in the Michigan Supreme Court, pursuant to Art. IV, Sec. 6, ¶8th, of the Michigan Constitution of 1963,[5] challenging the validity of that plan. The material allegations were controverted. After extensive arguments and briefs, after an interim order (5-3) of November 2, 1965, which did not question the validity of the Austin-Kleiner Plan, but which directed the Commission to reconvene, and after subsequent Commission deadlock, a majority of the Court on April 6, 1966 reaffirmed the validity of the Austin-Kleiner Plan and dismissed appellants' complaint. Contrary to appellants, the Court did *not* deadlock, instead dividing 4-3[6] and *on state grounds only*. No judge below accepted appellants' federal constitution arguments.

This appeal followed.

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[5] "Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution."

[6] Mr. Justice Black expressly abstained from decision, 377 Mich. 396, 416, 140 NW 2d 436, 441, but dissented from the order of dismissal. 377 Mich. 396, 474, 140 NW 2d 436, 468.

ARGUMENT

There Is No Substantial Federal Question

Introduction

In earlier years, these intervenors, as plaintiffs, challenged Michigan's 1952 Constitution districts, *Scholle v. Hare,* 360 Mich. 1, 104 N.W. 2d 63 (1960), vacated and remanded, 369 U.S. 429 (1962), judgment for plaintiff, 367 Mich. 176, 116 N.W. 2d 350 (1962), cert. den. *sub. nom., Beadle v. Scholle,* 377 U.S. 990 (1964), and thereafter, Michigan's 1963 Constitution provisions, *Marshall v. Hare,* 227 F. Supp. 989 (E.D., Mich., 1964), rev'd and rem'd., 378 U.S. 561 (1964). Michigan finally, having achieved by the plan in issue the closest approximation to "one-man, one-vote" in the nation,[7] appellants, who have heretofore openly opposed the equal population concept, would now obliquely deny its application.

Appellants cite five alleged grounds for invoking this Court's jurisdiction. On the contrary, these grounds raise no substantial federal question.

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[7] *Congressional Record,* p. 27202 (October 22, 1965). The maximum district population disparities are 1.01:1 in the Senate, 1.17:1 in the House. Minimum electoral control in each house is 52.0%.

1. There Was No Fourteenth Amendment Violation by Alleged Gerrymander.

a. Law.

Does an allegation of politically-shaped legislative districts state a federal claim?

This Court has declined to so hold.

In *WMCA, Inc. v. Lomenzo,* 238 F. Supp. 916, allegations and arguments identical to those herein made by appellants were presented to the three-judge district court. Indeed, the partisan bias in the districts in question was almost acknowledged by the defendants. The District Court dismissed, concluding that political gerrymandering does not state a Fourteenth Amendment cause of action. This Court affirmed. *WMCA, Inc. v. Lomenzo,* 382 U.S. 4 (1965). Mr. Justice Harlan's concurring opinion recited that the District Court "rejected contentions that • • • partisan 'gerrymandering' may be subject to federal constitutional attack under the Fourteenth Amendment. In affirming this decision this Court necessarily affirms these • • • eminently correct principles." 382 U.S. 4, 6.

Subsequently, citing *WMCA, inter alia,* the courts in *Bush v. Martin,* 251 F. Supp. 484 (D.C., Tex., 1966) (3-judge); *Kilgarlin v. Martin,* 252 F. Supp. 404, 432-434 (D.C., Tex., 1966) (3-judge); and *Sims v. Baggett,* 247 F. Supp. 96, 104, 105 (D.C. Ala., 1965) (3-judge) (on remand of *Reynolds*), rejected like arguments, that alleged partisan gerrymandering stated a federal cause of action. So did *all* judges below in the instant cause. No court has held to the contrary.

While appellants concede *Fortson v. Dorsey,* 379 U.S. 433, 439 (1964), to be of "another context", concerning the

validity of multi-member districts, and not involving alleged "partisan political gerrymandering in the formation of boundary lines of single-member districts" (Jurisdictional Statement, p. 20), they strangely would find comfort in *Burns v. Richardson,* 384 U.S. 73, 89 (1966), which, citing *Fortson* at 384 U.S., at 88, merely uses like language. For *Burns* is precisely of the same genre as *Fortson,* similarly involves multi-member districting, and in pertinent part concerns this Court's rejection of the District Judge's disapproval, as a matter of constitutional preference, for single-member over multi-member districts. Rather than enumerating new doctrine on this point in *Burns,* this Court merely repeated the formulation of *Fortson* (which of course had intedated *WMCA* and which was in fact cited by the affirmed lower court in the latter case as "mak[ing] it is clear that the Supreme Court * * * has refrained from condemning partisan gerrymandering as unconstitutional." 238 F. Supp. 916, 926).

b. Findings

Not only were appellants' constitutional arguments rejected, but so also were their factual conclusions. The Michigan Supreme Court, in its initial 1964 opinion, found that, "Subject to this controlling objective of substantial equal population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous and regular in shape, and do follow county, city, and township boundaries as nearly as practicable.[8] 373 Mich. 250, 254, 128 N.W. 2d 722, 723 (1964). A continuing

[8] Necessarily, some boundary lines were breached, 18 out of the State's 83 counties' lines in the Senate and 32 in the House." 377 Mich. 396, 450, 140 NW 2d 436, 457.

majority has again so found. 377 Mich. 396, 446, 449, 453, 471, 474, 140 N.W. 2d 436, 455, 456, 458, 467, 468.

A disinterested scholar has agreed:

> "Until 1964 the Upper Peninsula of Michigan, separated by water from the principal part of the state, had long been specially favored in terms of congressional representation and in terms of representation in the state legislature. The combined population of the eleventh and twelfth congressional districts (the Upper Peninsula plus nine Lower Peninsula Counties) was almost exactly equal in 1960 to the median district size for all 19 of the congressional districts in Michigan. In the state legislature the favoritism in behalf of the Upper Peninsula counties was even more marked, both before and after the effective date of the 1963 state constitution. Remarkably enough, the reapportionment which became effective in 1964 eliminated the disparities almost completely. The population of the 38 senatorial districts varied only from 205,118 to 207,094, while in the house the range was from 69,118 to 72,200. In both cases county lines were followed to the extent possible (in the senate apportionment only one Upper Peninsula county was divided); but of course it was sometimes necessary to cross county lines in order to avoid substantial continuing population differentials among the districts. Where it was thought essential to divide counties, the lines were drawn almost entirely along city and township lines, thus avoiding the division of an essentially unitary community between two or more districts. Perhaps the most unusual is senate district number 39, which consists of Flint City plus a portion of adjoining Genesee Township, the whole carved right out of the center of Genesee County [in fact substantially the same as in the Republican Commissioners' plan it succeeded]. The logic is ap-

> parent; the metropolitan center of the county may well have interests in part distinct from the surrounding countryside. Michigan has demonstrated that equality is possible where it had long been thought least likely to be attained." McKay, "Reapportionment: The Law and Politics of Equal Representation", pp. 237, 238 (The Twentieth Century Fund, N.Y., 1965.)

Finally, that appellants can devise alternative plans which equally satisfy constitutional requirements is irrelevant if the plan in fact adopted is proper.[9] Indeed, if appellants' maps (Jurisdictional Statement, p. 23) demonstrate anything, it is a distinction without a difference—unless it is their own Map II's unnecessary "fragmentation of natural political groupings and communities of interest", for example, of the natural, cohesive, Bay City-Saginaw metropolitan area (District 34),[10] or of the western

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[9] As stated in *Yancey v. Faubus*, 251 F. Supp. 998 (E.D., Ark., 1965), aff'd per curiam, *sub. nom., Crawford County Bar Association v. Faubus*, 383 U.S. 271 (1966):

> "At the outset of discussion we will say that it is not our function to effect revisions of the plan when such revisions are unnecessary to satisfy constitutional requirements. We further recognize that the question is not whether the plan adopted by the Board is the best that could be devised. There are indeed instances of where a district is not comprised of the most compatible counties, based on their diverse geographic and political compositions. In fact it defies imagination to contrive a scheme that would meet with everyone's satisfaction." At 1001.

[10] Under the heading "New Metropolitan Area For Michigan", the Detroit News for February 6, 1964 stated:

> "Bay City sends several thousand workers to Midland and Saginaw, and Saginaw exports other thousands to Midland and Bay City. With little or no planning from the top, the area's three principal cities—Bay City, Midland and Saginaw, have grown into a three county metropolitan area whose problems are demanding area-wide solutions."

And *cf., McKay, supra.*

Michigan district (No. 33) which, but for current necessary population modifications, was similar to a district which had appeared in every Michigan apportionment since 1895.

c. Conclusion

Undoubtedly, in rejecting gerrymander constitutional arguments, all courts have been mindful of the manifest complexities of fashioning district boundaries, cf., Frankfurter, J., dissenting, *Baker v. Carr,* 369 U.S. 186, 323, and Harlan, J., dissenting *Reynolds v. Sims,* 377 U.S. 533, 621, 622, and the consequent lack of "judicially discoverable and manageable standards," *Bush v. Martin,* 251 F. Supp. 484, 520 (D.C., Tex., 1966) (3-judge court), in a process inevitably having political consequences. The point is especially meaningful in the case at bar where the Michigan Constitution—primarily authored by appellants' political party including five of these appellants as convention delegates, and thereafter approved by the electorate—deliberately reposed the apportionment task in a bipartisan commission, selected directly by the respective political parties. Michigan Constitution, 1963, Art. IV, Sec. 6, ¶1st.

Surely, subject to population standards, the fashioning of district configurations, with the necessary discretion to do so, remains the clearest of state and legislative prerogatives.

2. There was no Fourteenth Amendment Violation by Alleged "Fragmentation of Natural Political Groupings and Communities of Interest"

Appellants postulate a second supposed constitutional right, the alleged freedom (personal?) from "deliberate fragmentation of natural political groupings and communities of interest", citing in support the "fair and effective representation" language of *Reynolds*.

Even if such "groupings" or "communities" were judicially identifiable, such an argument harks back to that which *Reynolds* repudiated, for, "neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes." Reynolds, 377 U.S. 533, 579, 580. The "fair and effective representation" to which this Court alluded in *Reynolds* was that of population-based representation, not its antithesis:

> "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an *effective and adequately weighted vote* would be unconstitutionally impaired." At 581 (Emphasis added.)

Surely, the configurations of legislative districts, otherwise satisfying population standards as nearly as practicable, are within the exclusive legislative judgment of each state. Cf. *Burns v. Richardson*, 384 U.S. 73, 89 (1965). Legislative apportionment remains "primarily a matter for legislative consideration and determination", *Reynolds*, 377 U.S., at 586.

And the constitutional standard is not what is best, but what is permissible.[11]

3. There was no "Excessive" Population Standard Below.

The gravamen of appellants' third issue is, in the phrase of Mr. Justice Souris below, that Austin-Kleiner renders equality too equally. 377 Mich. 396, 450, 140 N.W. 2d 436, 457.

The argument, erroneously postulating the Michigan Court's excessive subordination of allegedly surviving state standards to an exclusive population standard, is without merit:

(1) That the resultant plan more closely approximates theoretical equality than any other in the nation hardly bespeaks its infirmity.

(2) To apply the standards appellants urge is in part to relitigate *Marshall v. Hare,* which necessarily invalidated much of what appellants would enforce and is *res judicata* thereof.

(3) The argument is of a straw man variety and academic. For a majority of the Michigan Court never *held* what appellants claim, and moreover *found* what appellants will not admit. From the start, recognizing the *Reynolds* test as "population as nearly as practicable", 373 Mich. 250, a majority also found that whether or not the alleged state standards survive, or are inseparably related to provisions clearly stricken by *Marshall*—such separability itself being a state issue, *Forty-Fourth General Assembly of Colorado v. Lucas,* 379 U.S. 693 (1965)—, "Subject to this controlling objective of substantially equal

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[11] See note 9, above.

population, and to the extent it would not be subordinated, districts by such plan are formed as compact, contiguous, and regular in shape, and do follow county, city, and township boundaries as nearly as possible." 373 Mich. 250, 254, 128 N.W. 2d 722, 723. If, *arguendo*, the "state standards" survive, the Michigan Supreme Court has conclusively determined that they have been met. 377 Mich. 396, 448 ff. 453, 474, 140 N.W. 2d 436, 456, 458, 468.

There is nothing for federal review.

4. There Was No Improper Rejection of Proof.

Appellants claim a denial of due process in the Court's rejection of tendered "proof" respecting alleged gerrymandering and other matters.

Surely there is no right to present irrelevant or incompetent proofs. Since the "offer" related to a non-cognizable claim (issue I, *supra*); improperly proposed the testimony of individual lawmakers[12] as to their motivation in passing a law, *Presque Isle Township District v. County Board*, 364 Mich. 605, 111 N.W. 2d 853 (1961) (citing *State v. California Co.*, 79 N.D. 430, 56 N.W. 2d 762 (1953)), *Giddings v. Secretary of State*, 93 Mich. 1, 8, 52 N.W. 944, 947 (1892); and consisted "solely of conclusory allegations of suspicion and speculation supported only by reference to election results which, according to them, were achieved by the partisan gerrymandering by the alternate Austin-Kleiner Plan. * * * [and not] facts within their power to establish as distinguished from facts which they hoped to discover.", 377 Mich. 396, 446, 447, 453, 140 N.W.

[12] The legislative apportionment commissioners were unquestionably special legislators, whose product became law. Mich. Constitution, 1963, Art. IV, Sec. 6, ¶6th.

2d 436, 455, 458, there were adequate state grounds for the Court's rejection of the offer. It should further be added that the Court *did* have before it, as is not untypical in apportionment litigation, the official records of the Commission, together with the considerable matters of which the Court took judicial notice. 377 Mich. 396, 454, 140 N.W. 2d 436, 459.

5. The Judgment Below was Admittedly Final.

Appellants state that they pose a fifth issue, of an alleged denial of due process due to deadlock, "only against the possibility that this Court might be requested [by appellees] to hold" that there was no final judgment below from which appeal might be taken. We make no such argument, although we do dispute the characterization of the action below as a deadlock where, in fact, a majority of the Michigan Court found the appellants' position without merit (although an abstaining judge dissented from the order of dismissal).[13]

[13] See note 6, *supra*.

CONCLUSION

Appellants clearly present no substantial federal question warranting this Court's plenary consideration.

The political gerrymander argument was properly rejected in the findings and is opposed by law and policy. The argument against "fragmentation of political units and communities of interest" is an argument either to consider matters deemed impermissible by *Reynolds*, or which are in any event committed to exclusive legislative discretion. The argument that the Michigan Supreme Court excessively heeded the teachings of this Court by honoring a legislative plan of maximal equality (over allegedly surviving state standards) is frivolous on its face, runs counter to the controlling decision in *Marshall v. Hare*, invades an area of state law subject to final disposition by the Michigan Supreme Court, and is academic in view of the findings below. Finally, the argument alleging rejection of incompetent "proofs" is without merit.

The decision below was clearly correct. There is no substantial federal question, and this appeal should be dismissed or the judgment affirmed.

Respectfully submitted,

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Dated: September 28, 1966.

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APPENDIX A

MICHIGAN CONSTITUTION, 1963

ARTICLE IV—Legislative Branch

Sec. 2. The senate shall consist of 38 members to be elected from single member districts at the same election as the governor for four-year terms concurrent with the term of office of the governor.

In districting the state for the purpose of electing senators after the official publication of the total population count of each federal decennial census, each county shall be assigned apportionment factors equal to the sum of its percentage of the state's population as shown by the last regular federal decennial census computed to the nearest one-one hundredth of one percent multiplied by four and its percentage of the state's land area computed to the nearest one-one hundredth of one percent.

In arranging the state into senatorial districts, the apportionment commission shall be governed by the following rules:

(1) Counties with 13 or more apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. After each such county has been allocated one senator, the remaining senators to which this class of counties is entitled shall be distributed among such counties by the method of equal proportions applied to the apportionment factors.

(2) Counties having less than 13 apportionment factors shall be entitled as a class to senators in the proportion that the total apportionment factors of such counties bear to the total apportionment factors of the state computed to the nearest whole number. Such counties shall thereafter be arranged into senatorial districts that are compact, con-

venient, and contiguous by land, as rectangular in shape as possible, and having as nearly as possible 13 apportionment factors, but in no event less than 10 or more than 16. Insofar as possible, existing senatorial districts at the time of reapportionment shall not be altered unless there is a failure to comply with the above standards.

(3) Counties entitled to two or more senators shall be divided into single member districts. The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the county by the number of senators to which it is entitled. Each such district shall follow incorporated city or township boundary lines to the extent possible and shall be compact, contiguous, and as nearly uniform in shape as possible.

Sec. 3. The house of representatives shall consist of 110 members elected for two-year terms from single member districts apportioned on a basis of population as provided in this article. The districts shall consist of compact and convenient territory contiguous by land.

Each county which has a population of not less than seven-tenths of one percent of the population of the state shall constitute a separate representative area. Each county having less than seven-tenths of one percent of the population of the state shall be combined with another county or counties to form a representative area of not less than seven-tenths of one percent of the population of the state. Any county which is isolated under the initial allocation as provided in this section shall be joined with that contiguous representative area having the smallest percentage of the state's population. Each such representative area shall be entitled initially to one representative.

After the assignment of one representative to each of the representative areas, the remaining house seats shall be apportioned among the representative areas on the basis of population by the method of equal proportions.

Any county comprising a representative area entitled to two or more representatives shall be divided into single member representative districts as follows:

(1) The population of such districts shall be as nearly equal as possible but shall not be less than 75 percent nor more than 125 percent of a number determined by dividing the population of the representative area by the number of representatives to which it is entitled.

(2) Such single member districts shall follow city and township boundaries where applicable and shall be composed of compact and contiguous territory as nearly square in shape as possible.

Any representative area consisting of more than one county, entitled to more than one representative, shall be divided into single member districts as equal as possible in population, adhering to county lines.

Sec. 4. In counties having more than one representative or senatorial district, the territory in the same county annexed to or merged with a city between apportionments shall become a part of a continguous representative or senatorial district in the city with which it is combined, if provided by ordinance of the city. The district or districts with which the territory shall be combined shall be determined by such ordinance certified to the secretary of state. No such change in the boundaries of a representative or senatorial district shall have the effect of removing a legislator from office during his term.

Sec. 5. Island areas are considered to be contiguous by land to the county of which they are a part.

Sec. 6. A commission on legislative apportionment is hereby established consisting of eight electors, four of whom shall be selected by the state organizations of each of the two political parties whose candidates for governor received the highest vote at the last general election at which a governor was elected preceding each apportionment. If a candidate for governor of a third political party has received at such election more than 25 percent of such gubernatorial vote, the commission shall consist of 12 members, four of whom shall be selected by the state organization of the third political party. One resident of each of the following four regions shall be selected by each political

party organization: (1) the upper peninsula; (2) the northern part of the lower peninsula, north of a line drawn along the northern boundaries of the counties of Bay, Midland, Isabella, Mecosta, Newaygo and Oceana; (3) southwestern Michigan, those counties south of region (2) and west of a line drawn along the western boundaries of the counties of Bay, Saginaw, Shiawassee, Ingham, Jackson and Hillsdale; (4) southeastern Michigan, the remaining counties of the state.

No officers or employees of the federal, state or local governments, excepting notaries public and members of the armed forces reserve, shall be eligible for membership on the commission. Members of the commission shall not be eligible for election to the legislature until two years after the apportionment in which they participated becomes effective.

The commission shall be appointed immediately after the adoption of this constitution and whenever apportionment or districting of the legislature is required by the provisions of this constitution. Members of the commission shall hold office until each apportionment or districting plan becomes effective. Vacancies shall be filled in the same manner as for original appointment.

The secretary of state shall be secretary of the commission without vote, and in that capacity shall furnish, under the direction of the commission, all necessary technical services. The commission shall elect its own chairman, shall make its own rules of procedure, and shall receive compensation provided by law. The legislature shall appropriate funds to enable the commission to carry out its activities.

Within 30 days after the adoption of this constitution, and after the official total population count of each federal decennial census of the state and its political subdivisions is available, the secretary of state shall issue a call convening the commission not less than 30 nor more than 45 days thereafter. The commission shall complete its work within 180 days after all necessary census information is available. The commission shall proceed to district and appor-

tion the senate and house of representatives according to the provisions of this constitution. All final decisions shall require the concurrence of a majority of the members of the commission. The commission shall hold public hearings as may be provided by law.

Each final apportionment and districting plan shall be published as provided by law within 30 days from the date of its adoption and shall become law 60 days after publication. The secretary of state shall keep a public record of all the proceedings of the commission and shall be responsible for the publication and distribution of each plan.

If a majority of the commission cannot agree on a plan, each member of the commission, individually or jointly with other members, may submit a proposed plan to the supreme court. The supreme court shall determine which plan complies most accurately with the constitutional requirements and shall direct that it be adopted by the commission and published as provided in this section.

Upon the application of any elector filed not later than 60 days after final publication of the plan, the supreme court, in the exercise of original jurisdiction, shall direct the secretary of state or the commission to perform their duties, may review any final plan adopted by the commission, and shall remand such plan to the commission for further action if it fails to comply with the requirements of this constitution.

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In The
SUPREME COURT OF THE UNITED STATES
October Term 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,

v.

SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

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In The
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No. _____

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,

v.

SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

MOTION TO DISMISS OR AFFIRM

Appellee, pursuant to Rule 16 of the Revised Rules of the Supreme Court of the United States, moves that the above entitled case be dismissed or affirmed on grounds that no substantial federal question is presented.

Statement

This is a direct appeal from the final order of the Supreme Court of Michigan entered on April 6, 1966 dismissing appellants' petition made pursuant to Article IV, Sec. 6, paragraph 8 of the Michigan Constitution of 1963 for review of the apportionment and districting plan for the Michigan legislature. 377 Mich. 396

On January 1, 1964 the Michigan Constitution of 1963 became effective. Article IV, Sec. 6 of said Constitution establishes a bipartisan Commission on legislative apportionment consisting of eight members (four from each of the two major political parties) to district and apportion the state senate and house of representatives according to the provisions of the Constitution. Paragraph 7 of Sec. 6 provides that in case a majority of the Commission members cannot agree upon a plan, each member individually or jointly with other members may submit proposed plans to the State Supreme Court which will determine which plan complies most accurately with constitutional requirements and will direct adoption of that plan by the Commission.

It is further provided by paragraph 8 of Sec. 6 that after the adoption of a final plan by the Commission any elector may make application to the Court to review any final plan adopted by the Commission and, if necessary, to remand such plan to the Commission for further action.

During January of 1964 the Michigan Apportionment Commission met frequently but was unable to agree upon a plan of apportionment. Thereafter, in accordance with Article IV, Sec. 6, paragraph 7, a number of plans were submitted by members of the Commission to the State

Supreme Court for consideration. Among the plans submitted were the so-called "Hannah-Brucker Plan" and the "Austin-Kleiner Plan."

In March of 1964 decision was rendered in a suit previously filed in the United States District Court for the Eastern District of Michigan wherein plaintiffs alleged the Michigan constitutional provisions concerning apportionment of the state legislature to be violative of the Fourteenth Amendment of the United States Constitution. The District Court held that Michigan constitutional provisions relating to apportionment of the legislature resulting in substantial departure from the principle of equal representation in the state senate and slight departure in the state house by permitting increase in the representation of persons in sparsely populated areas was not invalid under the Fourteenth Amendment. *Marshall v. Hare,* 227 F Supp 989 (1964). Subsequently on May 26, 1964 the Michigan Supreme Court concluded that the Hannah-Brucker Plan should be adopted and on May 28, 1964 said plan was adopted by the Michigan Apportionment Commission and published by the Michigan Secretary of State.

On June 15, 1964 this Court then decided *Reynolds v. Sims,* 377 U.S. 533, in which the Court held that as a basic federal constitutional requirement, the equal protection clause requires that seats in the both houses of a bicameral state legislature must be apportioned as nearly as practicable upon a population basis.[1]

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[1] On June 22, 1964 this Court reversed the judgment of the District Court in *Marshall v. Hare,* supra, and remanded the case for further proceedings consistent with the view stated by the Supreme Court in *Reynolds v. Sims* and other cases relating to state legislative apportionment decided along with *Reynolds,* 378 US 561 (1964). The District Court has since deferred further action pending the outcome of this case.

Two days later, on June 17, 1964, the Michigan Supreme Court entered orders vacating its previous order directing adoption of the Hannah-Brucker Plan and directed the Apportionment Commission to proceed to adopt a plan in accordance with the constitutional requirements and guide lines provided by the U.S. Supreme Court in *Reynolds v. Sims,* supra. Thereafter, the Apportionment Commission, again being unable to agree upon a plan, once more submitted various plans to the State Supreme Court for its consideration.

On June 22, 1964 the State Supreme Court in *In re Apportionment of Legislature,* 373 Mich 250 (appellants' Jurisdictional Statement — Appendix C) ruled that there can be no question as to the overriding requirement that districts in both houses of the legislature must be as nearly equal in population as practicable and that the Austin-Kleiner Plan filed with the Court most nearly complied with that requirement. The Court, therefore, ordered the Legislative Apportionment Commission to adopt the Austin-Kleiner Plan, said plan to be published by the Michigan Secretary of State and to be effective for the 1964 election. The 1964 general election for seats in both houses of the Michigan legislature was based on the districts constructed in the Austin-Kleiner Plan and are still extant.

On August 21, 1964 the present action was commenced by the filing of a petition in the Michigan Supreme Court pursuant to Article IV, Sec. 6, paragraph 8. In their petition the appellants requested that the State Supreme Court review the Austin-Kleiner Plan, provide for discovery and the taking of evidence, declare the Austin-Kleiner Plan void, and order the State Apportionment Commission to prepare a new plan.

On January 14, 1965 the Michigan Supreme Court denied

petitioners' motion for discovery. On February 5, 1965, a motion for reconsideration having been filed by the appellants, the Court entered an order scheduling the cause for oral argument on May 11, 1965 and amended its order of January 14, 1965 to provide that whether and to what extent appellants' request for discovery should be granted was to be briefed and would be decided after oral argument. Oral argument was presented on May 11, 1965 and on November 2, 1965 the Court in *In re Apportionment of Legislature,* 376 Mich 410 (appellants' Jurisdiction Statement — Appendix A) without ruling on matter of discovery and the taking of evidence, remanded the matter of legislative apportionment back to the State Commission to proceed anew with such work as would enable the Commission to apportion the state legislature according to the applicable requirements of the Federal and State Constitutions. The order of the Court stated that in the event of another deadlock continuing for a 60 day period, the Secretary of the Commission was to so report to the Court with petition for entry of such further mandatory order as the Court might choose to enter pursuant to its broad powers of mandamus.

On January 4, 1966 the Michigan Secretary of State, acting as Secretary of the Apportionment Commission, reported that the Commission was once again deadlocked. Subsequently the four Republican commissioners filed a statement with the Court praying that the Court direct adoption of their "Senate and House Plan No. 5," or in the alternative, order further hearing, reference, or other relief. Senate and House Plan No. 5 as submitted to the Court by the Republican commissioners advocated an apportionment formula based upon a predetermined ratio of a 5% maximum variation between the smallest and the largest districts. The plan substantially reduced the number of county lines crossed, while substantially increasing the

population disparities between districts as compared with the existent Austin-Kleiner Plan.

Shortly after the filing of the Republican statement urging adoption of their "Senate and House Plan No. 5" a reply by the Democratic commissioners and brief by the intervening defendant Scholle, et al., was filed with the Court wherein the 5% plan offered by the Republican commissioners was insisted to be an unconstitutional mechanical approach to apportionment citing *Roman v. Sincock,* 377 U.S. 695, 84 S Ct 1449, 12 L ed 2d 620, and that population disparities were excessive. About the same time, a Democratic version of the so-called 5% plan was also offered to the Court.

On January 12, 1966 the Michigan Supreme Court met in special conference and by majority vote denied petitioners' request for discovery and also ordered up all of the proceedings and records of the Commission on legislative apportionment. During the ensuing six weeks the parties then filed with the Court numerous statements, supplemental statements, amended statements, briefs, answers and petitions. See *In re Apportionment of State Legislature,* 377 Mich 396, 464-469 (appellants' Jurisdictional Statement—Appendix B).

Finally, on April 6, 1966, the Michigan Supreme Court reaffirmed its earlier decision that of the various apportionment plans submitted to the Court for its consideration the previously adopted and existing Austin-Kleiner Plan more nearly met the requirements of the Federal and State Constitutions. The Court, therefore, ordered that the Austin-Kleiner Plan be followed in the 1966 election and thereafter until the next decennial reapportionment or as otherwise may be required by constitutional amendment.

ARGUMENT

I

The Michigan Legislative Apportionment Plan does not violate the equal protection clause of the Fourteenth Amendment.

The main thrust of Appellants' claim, both in this Court and in the Michigan Supreme Court, is that districts established pursuant to the Michigan plan of apportionment (although nearly as equal in population as practicable) are designed to maximize the legislative representation of one major party and minimize those of the other major party. Appellants assert that the districts are of unnatural shape, cross political subdivision boundary lines, and as a result the Michigan Plan is one of invidious discrimination in violation of the equal protection clause of the Fourteenth Amendment.

Pursuant to Article IV, Section 6 of the Michigan Constitution of 1963, the Michigan Supreme Court is charged with the responsibility (in cases where the state apportionment commission cannot agree upon a plan) of considering various plans of apportionment which may be submitted to it by individual members of the commission, to order adoption of the plan which in the opinion of the Court most nearly complies with constitutional requirements and, if requested by a petition filed by electors, to review any final plan adopted by the state commission.

In proceedngs before the State Court resulting in its decisions reported at 373 Mich 250 and 377 Mich 396, the Court has clearly ruled that of those plans submitted, the present plan of state apportionment most accurately com-

plies with Federal and State constitutional requirements and no claim is made by appellants in the case at bar that the principle of equal population in state legislative apportionment as construed by this Court in *Reynolds v. Sims* has not been fully implemented by the existing plan. Rather, Appellants attack the present Michigan plan of apportionment on grounds that state standards have been submerged in the "one-man one vote" principle and that the plan is the product of partisan political gerrymandering.

A state may prescribe standards of apportionment designed to prohibit or inhibit gerrymandering. *Reynolds v. Sims,* 377 U.S. 533, 578. However, in considering state legislative apportionment plans which seek to recognize existing political unit boundary lines, etc., this Court has clearly stated in *Reynolds* as follows:

> "But if, even as a result of a clearly *rational* state policy of according some legislative representation to political subdivisions, the population is submerged as the controlling consideration in the apportionment seats in the particular legislative body, then the right of all the State's citizens to cast an effective, and adequately weighted vote would be unconstitutionally impaired." (Emphasis added)

While some members of the Michigan Supreme Court have expressed doubt whether state standards relating to compactness and the following of natural and political boundary lines contained in Article IV of the Michigan Constitution survive this Court's decision in *Marshall v. Hare,* 378 U.S. 561 (reversing the decision of the Federal District Court upholding Michigan's constitutional standards relating to apportionment resulting in substantial departure from the principle of equal population of state legislative districts), nevertheless, it is clear from the State

Court's Opinions that of all of the plans submitted to the Court, the existing plan is most in keeping with the overriding requirement of population equivalency and does form compact and contiguous districts, etc., as nearly as practicable. Moreover, Appellants' purely conclusory allegations of gerrymandering put forth in the lower court based solely upon suspicion and speculation and supported only by reference to prior election results, did not compel the Court's grant of discovery and the taking of testimony. As stated at 377 Mich 447, Appellants submitted no offer of proof of facts within their power to establish, as distinguished from facts which they hoped to discover. In other words, no fishing expedition was sanctioned by the Michigan Supreme Court.

In the State Court Appellants claimed the superior merits of the so-called "5% plan," a plan based upon a mathematical formula providing in its application for a variation in population among the districts of as much as 8%. Population disparities of the 5% plan ranged up to 16,590 in the Michigan Senate and 5,620 in the House. Thus the plan supported by Appellants was considerably greater in disparity of population than the 2,027 in the Senate and 3,082 in the House, as contained in the existing Michigan plan of apportionment.

In supporting the 5% plan, Appellants also ignore this Court's decision in *Roman v. Sincock,* 377 U.S. 695, 710 which deplores any mathematical standard. In *Roman* this Court has unequivocally disavowed state legislative apportionment involving mathematical standards stating that:

> "In our view the problem does not lend itself to any such uniform formula, and it is neither practicable nor desirable to establish rigid mathematical standards for evaluating the constitutional validity of a State

> legislative apportionment scheme under the equal protection clause. Rather, the proper judicial approach is to ascertain whether under the particular circumstances existing in the individual State whose legislative apportionment is at issue, there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination."

Appellants, in claiming invidious discrimination based upon the establishment of legislative districts of unnatural shape which cross natural or political unit boundary lines, assert the merits of the 5% plan by showing that under the plan only 3 of 83 county lines were breached in the Senate (compared to 18 in the present plan) and only 11 county lines were breached in the House. (compared to 32 in the present plan). In urging the State Court to disturb the present plan and to order adoption of the "5% plan" appellants overlook the fact that the latter plan also clearly established oddly shaped and distorted districts, and that (as stated at 377 Mich 473) the plan could claim no virtue with respect to partisan gerrymandering.

Appellee does not here claim, nor has the Michigan Supreme Court held, that the present plan is perfect or that it could not be improved or altered and still meet Federal constitutional requirements. However, there is obviously no merit in the call of Appellant's to throw out the existing law merely because it is their conclusion that some districts are not as compact or square in shape as possible, or that some districts do not follow city or township boundary lines as closely as might be possible. The Michigan Supreme Court performed its constitutional duty of selecting, from the apportionment plans before the Court, the plan which

in the Court's opinion most nearly complied with Federal and State requirements.

> " • • • It follows, also that it cannot be said that the legislature wholly failed to have in view and apply the principle of compactness of territory. No district, unless a circle or a square, could be so compact that it could not be made more so. • • •" *Woodyatt v. Thompson*, 155 Ill. 451, 40 N.E. 307, 316.

It is additionally apparent that to give credence to any charge of "unlawful" political gerrymandering, one must assume the immutability of voting habits in a given area. The record in Michigan shows the fallacy of any such assumption, the most recent case in point being the presidential and gubernatorial elections of 1964. As stated in *Honeywood v. Rockefeller*, 214 F. Supp 897:

> "The incalculable and imponderable factors that make up an individual's choice as to how he will register his vote make certainty here an illusive object. We would require far more substantial evidence to warrant our intrusion into the political arena and to justify any action by the Court requiring the Legislature to revise these districts again."

This Court's decision in *Fortson v. Dorsey*, 379 U.S. 433, cited by Appellants in support of their political gerrymandering claim, was exclusively addressed to the question of multi-member legislative districts and the possibility of such districts cancelling out the voting strength of political or racial elements. The Michigan plan contains no multi-member districts.

The Appellee respectfully submits that the establishment of state legislative districts of as nearly equal popula-

tion as practicable necessarily results in the crossing of county, city and township boundary lines and in the unnatural shape of districts. However, this does not support the speculation and conclusory allegations put forth by Appellees that such districts are the product of partisan political gerrymandering. Nor does such a claim present a substantial Federal question under the equal protection clause of the Fourteenth Amendment.

II

The Michigan Supreme Court did not err in using equality of population as the prime and overriding criteria in determining which of the districting plans submitted for its consideration most nearly complied with State and Federal constitutional requirements.

Appellants assert that the action of the Michigan Supreme Court in ordering adoption of the present Michigan Apportionment plan (Austin-Kleiner plan), and the Court's subsequent refusal to disturb the plan after hearing on Appellants' petition to review is in clear conflict with such cases as *Yancey v. Faubus,* 251 F. Supp 998 (E.D. Ark. 1965), affirmed per curium, 383 U.S. 271 (1966); *Engle v. Kerner,* 33 Ill. 2d 11, 210 NE 2d 165 (1965), appeal dismissed per curium. 384 U.S. 30 (1966); *Stout v. Bottorff,* 248 F. Supp 488 (S.D. Ind. 1965), and *Sims v. Boggett,* 247 F. Supp 96 (M.D. Ala. 1965).

The foregoing cases and others cited by Appellants stand for the proposition that state legislative apportionment must give primary consideration to population and consideration to other factors such as geography, political subdivisions and the like is subservient to the population factor, that mathematical nicety is not constitutionally required in

reapportionment schemes, and that there may only be minor deviations from the population norm as necessary. The utilization of state standards in legislative apportionment may not, however, reach the point where their application brings unavoidable conflict with the United States Constitution.

Unlike the plans involved in the foregoing cases, the apportionment plan approved by the Michigan Supreme Court establishes districts of substantially equal population, and in the instant appeal Appellants in effect call for nullification of the state apportionment law by this Court on grounds that the Michigan plan goes too far in curing the unconstitutional conditions which this Court dealt with in *Reynolds v. Sims,* supra. Appellants, in so arguing, further maintain that in approving the existing apportionment plan the State Court has failed to observe alleged valid state constitutional standards by giving too limited consideration to relevant factors such as geography and political subdivisions.

A reading of the most recent apportionment decision of the Michigan Supreme Court does not however sustain such claims. At 377 Mich 450, Mr. Justice Souris speaking of population equality in districting and attendant state standards wrote as follows:

> "The thrust of the challenge against the alternate Austin-Kleiner plan is that it accomplishes greater equality than the Federal Constitution's equality clause requires at the expense of surviving State standards. It is not possible to claim, and nobody does, that the requirements of equality of population and all of the Stat standards claimed to survive can be met. If equali is approached, some boundary lines must be brea ed and some districts must be

irregularly shaped. The alternate Austin-Kleiner plan approaches absolute population equality, perhaps more so than any other reapportionment plan in the United States, to date. Necessarily, some boundary lines were breached, 18 out of the State's 83 counties' lines in the Senate and 32 in the House. However, preeminence of the Federal equality clause requirements, in our scheme of legal values, precludes any finding by this Court of constitutional infirmity in the alternate Austin-Kleiner plan on the ground that it renders equality too equally at the expense of subordinate State standards."

At 377 Mich 453, 454, Mr. Justice Adams, addressing himself to the same matter, stated:

"The recent 60-day remand to the apportionment commission demonstrates that it is possible to come up with numerous plans, all of which apparently have some merit. Because of the nature of Federal constitutional standards, however, there is never full conformity with State standards.

Consequently, once a plan has been finally adopted, as the alternate Austin-Kleiner plan has been, for its validity to be successfully attacked there must be pleaded substantial departure from State standards. That has not been done here."

Appellee submits that it is readily apparent that the Michigan Supreme Court has carefully considered alleged state constitutional standards and it is equally evident that the highest Court of this state has decisively ruled that the Michigan Apportionment plan does not violate state standards.

Appellees respectfully submit that the Michigan Apportionment plan is on its face obviously in compliance with Federal constitutional requirements and guidelines as promulgated by this Court in *Reynolds v. Sims.* Moreover, the decision of the Michigan Supreme Court relating to application of alleged state constitutional standards should be conclusive and assertion by Appellants that alleged state standards have not been adequately applied in a state apportionment plan does not raise a substantial federal question.

III

Appellants were not denied due process of law by virtue of the Michigan Supreme Court's denial of their request for discovery and taking of testimony or by the division of the Court in its opinion validating the present Michigan Apportionment plan.

The appellants assign as error the refusal of the Michigan Supreme Court to grant their request seeking discovery and the introduction of testimony of past election results in the Supreme Court to attack the constitutionality of the existing Michigan Apportionment Law. It is claimed that the opportunity for a free hearing was thus denied and appellants cite *Iowa Central Railroad Co. v. State of Iowa,* 160 U.S. 389 (1896), *Hooley v. United States,* 209 F. 2d 219 (1st Cir.) 1954, Cert. den. 347 U.S. 953 (1954), *Honeywood v. Rockefeller,* 214 F. Supp 897 (E.D. N.Y. 1963) and other cases.

In *Iowa Central Railroad Co.*, supra, the Court held that the 14th Amendment in no way undertakes to control the power of the state to determine by what process legal rights

may be asserted, providing the method of procedure allows a free opportunity to be heard. This Court further indicated that whether a Court of last resort of a state has properly construed its own constitution and laws in determining what process of law may be applicable to a matter to be adjudicated by it is purely a question of state law binding upon the United States Supreme Court.

In *Hooley v. United States*, supra, the circumstances involved a criminal defendant accused of contempt in a grand jury proceeding. The Court held that a criminal defendant is entitled to be heard and introduce evidence and is not liable to judgment based solely upon the transcript of a grand jury examination. Appellee submits that the circumstances attendant in the foregoing criminal case have little bearing upon the facts involved in this appeal and should not be considered binding or applicable here.

In *Honeywood v. Rockefeller*, supra, plaintiffs were directly attacking the constitutionality of a state statute and alleging racial considerations to be a motivating factor in the redistricting of a congressional district. The Court held that proofs should have been submitted by the plaintiffs to substantiate their claims. The foregoing case is distinguishable from the instant appeal. The Michigan Supreme Court in considering the various apportionment plans submitted to it and in reviewing the final plan adopted by the Apportionment Commission was not functioning within the usual framework of adversary proceedings. As stated in the State Court's most recent opinion at 377 Mich 451:

> "this proceeding involves only our review of the alternate Austin-Kleiner plan in the face of allegations that it fails to comply with constitutional requirements * * *."

Beginning in 1964 and at intervals over the ensuing two years culminating in its recent decision in *In re Apportionment of Legislature,* 377 Mich 396, the State Court thoroughly and at great length considered the merits of various apportionment plans. During this period briefs and oral argument going to the merits of the various plans was afforded to all parties, together with numerous statements, amended statements, supplemental statements and other pleadings filed with the Michigan Court. Appellants' contention that they were not afforded a fair opportunity to be heard is thus not supported by the record of proceedings before the Court. The position of the Michigan Supreme Court is conclusively stated at 377 Mich 454, where the following appears:

> "Petitioners have failed to demonstrate that discovery would be appropriate to this case. All of the proceedings of the apportionment commission are open, public records. The official figures of the United States census, election precincts, political and geographic boundaries, are matters of which this Court takes judicial notice. The motivations, cogitations and machinations of the commissioners, even if discoverable, would not be relevant. Only the plan is subject to review."

The Michigan Supreme Court's denial of Appellants' request for discovery and the taking of testimony was moreover in keeping with earlier decisions of the Court relating to the application of Michigan Court Rules to discovery procedures, depositions, the introduction of testimony, etc. *Banaskiewicz v. Baun,* 359 Mich 109; *Insealator, Inc. v. Wallace,* 357 Mich 233; *Schechet v. Kesten,* 372 Mich 346, and *Board of Education of Presque Isle Township v. Presque Isle County Board of Education,* 364 Mich 605.

Finally, the Appellee submits that this Court has in many cases recognized that as a general rule matters affecting the remedy are governed by the law of the forum, and a decision by a State Court on a matter of state pleading or practice is therefore not reviewable by the United States Supreme Court. *Central Vermont R. v. White,* 35 S. Ct. 865, 238 U.S. 507; *Milkwagon Drivers' Union* vs. *Meadowmore Dairys Incorporated,* 61 S. Ct. 552, 312 U.S. 287; *McDonald v. Oregon,* 34 S. Ct. 772, 233 U.S. 655; *Los Angeles Farming etc. Co. v. Los Angeles California,* 30 S. Ct. 452, 217 U.S. 217 and *West v. Louisiana,* 24 S. Ct. 650, 194 U.S. 258.

The present state apportionment plan was adopted pursuant to the Michigan Supreme Court's decision *In re Apportionment of Legislature,* 373 Mich 250, wherein five Justices signed the Court Order directing adoption of the plan. Appellants now raise objection to the fact that the Court's Order of April 6, 1966 ordering dismissal of Appellants' petition to review the existing plan was signed by only four of the Court's eight Justices. The fact that Appellants' petition for review was denied by virtue of the foregoing division of the Court does not in Appellee's view establish denial of due process of law, nor does such division raise any substantial federal question requiring or deserving this Court's consideration. Rather, the simple and unassailable fact is that Appellants failed to convince a majority of the Michigan Court that their complaint was well-founded.

CONCLUSION

The Appellee respectfully submits that this appeal does not raise any serious or substantial question under the Equal

Protection and Due Process Clauses of the Fourteenth Amendment.

The Michigan Supreme Court has faithfully exercised the functions entrusted to it under Article IV, Section 6 of the Michigan Constitution of 1963, viz., the selection of a legislative apportionment plan which most nearly complies with permissible state standards and Federal requirements as exemplified in *Reynolds*.

After much effort the State of Michigan has at last achieved a plan of legislative apportionment which complies beyond doubt with the requirements of the Constitution of the United States as well as state standards where same may be applied. Legislative representation of all *people* in Michigan is now a fact.

Wherefore, Appellee prays that the entitled cause of action be dismissed or affirmed.

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The Capitol
Lansing, Michigan

Dated: September 27, 1966

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

APPELLANTS' BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM

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APPELLANTS' BRIEF OPPOSING MOTIONS TO DISMISS OR AFFIRM

Appellants, pursuant to Rule 16(3) of the Rules of the Supreme Court of the United States, submit this reply in opposition to the Motions to Dismiss or Affirm of appellee James M. Hare and intervenors-appellees August Scholle, et al. These Motions present, in essence, six bases

for the claim that no substantial federal question is presented by this appeal.[1]

(1) The decision of this Court in *Marshall v. Hare*[2] decided the present case, and appellants seek only to re-litigate *Marshall v. Hare.*

(2) The Michigan Supreme Court decided this case solely on a question of state law.

(3) Partisan political gerrymandering does not constitute a denial of equal protection in violation of the Fourteenth Amendment because no case has so held and because of the difficulty of establishing judicial guidelines to deal with gerrymandering.

(4) The proofs offered in support of the gerrymander claims were conclusory and speculative, and were incompetent as a matter of state law; hence such proofs were not sufficient to support a claim of gerrymander and the denial of an opportunity to present such proofs was not a denial of due process.

(5) The facts alleged to support the claim of partisan political gerrymandering were found adversely to appellants.

(6) The Michigan Supreme Court did not apply an absolute population equality requirement to the exclusion of valid Michigan constitutional provisions.

These arguments will be disposed of *seriatim.*

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[1] The Motion of appellee Hare also discusses the validity of certain other apportionment plans which are not in issue here and not relevant to the appeal.

[2] 378 U.S. 561 (1964).

(1) The Significance of Marshall v. Hare.

Intervenors-appellees claim that this case is controlled by *Marshall v. Hare,* 378 U.S. 561 (1964), reversing 227 F. Supp. 989 (E.D. Mich. 1964).[3] The further assertion is made that the original adoption of the Austin-Kleiner plan was consequent upon this Court's decision in *Marshall.* Both assertions are erroneous.

The June 17, 1964, orders of the Michigan Supreme Court, 373 Mich. 247, 128 N.W. 2d 721, declaring the then existent apportionment law invalid and directing the apportionment commission to adopt a new plan in compliance with *Reynolds v. Sims,* 377 U.S. 533 (1964), were issued five days before this Court decided *Marshall.* The Michigan court's subsequent approval of the Austin-Kleiner Plan came on June 22, 1964 without any mention whatever of *Marshall,* coincidentally decided sometime the same day by this Court.[4] (373 Mich. 250, 128 N.W. 2d 722)

This Court's reversal in *Marshall* does not control the present case. At issue in *Marshall* was the constitutional validity of the Michigan constitutional provision commonly known as the "80-20" formula for the senate apportionment and the "0.7 per cent" provision for the house apportionment,[5] both of which resulted in representation based partially on area. This Court's reversal of the District Court concededly invalidated these provisions, but not the remaining anti-gerrymandering standards,[6] the use of which,

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[3] Significantly, the Motion of appellee Hare makes no such claim.

[4] Indeed, the supplemental concurring opinion of Mr. Justice Souris, filed two days later, contains the first mention of *Marshall v. Hare.* (373 Mich. 257, 258, 128 N.W. 2d 724, 725)

[5] Michigan Constitution of 1963, Article IV, Sections 2 and 3.

[6] Cited in footnote on page 30 of appellants' Jurisdictional Statement.

within the population objective, was clearly sanctioned by this Court in *Reynolds v. Sims, supra.*

This proceeding involves an attack upon the present apportionment law, which was not even in effect at the time of *Marshall v. Hare,* on the grounds of political gerrymander and misinterpretation of the Federal equal population requirement, neither decided by *Marshall.*

(2) Jurisdiction of the Appeal is not Precluded by an Adequate Non-Federal Basis for the Judgment.

Appellees assert that the Michigan Supreme Court upheld the present Michigan apportionment law "on state grounds only," and hence this court lacks jurisdiction to review the state court decision. Appellees misconceive the rule they seek to supply.

It has long been settled that this Court will not decline to review a state court's decision that rests upon both a federal and non-federal ground unless the non-federal ground is adequate to support the judgment even if the state court's decision on the federal question be reversed. *Chicago, Burlington & Quincy Railway Co. v. Illinois ex rel. Grimwood,* 200 U.S. 561 (1906), and *Herb v. Pitcairn,* 324 U.S. 117 (1945).

As shown in the Jurisdictional Statement, appellants have consistently claimed that the Michigan apportionment law is invalid because it violates certain rights under the Fourteenth Amendment. The Michigan Supreme Court decided these questions adversely to appellants. There is no state ground to support the Michigan court's decision if this Court reverses the decision below on any of the federal grounds asserted by appellants.

(3) Partisan Political Gerrymandering Violates the Fourteenth Amendment.

Appellees argue that politically gerrymandered legislative districting violates no Federal constitutional right, relying on a statement of Mr. Justice Harlan in his separate concurrence to the *per curiam* affirmance in *WMCA, Inc. v. Lomenzo,* 382 U.S. 4 (1965); *Fortson v. Dorsey,* 379 U.S. 433 (1965); *Burns v. Richardson,* 384 U.S. 73 (1966); and several district court decisions.[7] While Mr. Justice Harlan's statement characterizes the *Lomenzo* order as a holding on the question, appellants respectfully submit that such a result is inconsistent with clear pronouncements of this Court in other cases that received plenary consideration.

The depth of this Court's concern for the achievement of fair and effective representation, including the avoidance of invidiously discriminatory districting, is clear from *Reynolds v. Sims,* 377 U.S. 533, 565-566, 578-581 (1964), and companion cases; also *Fortson v. Dorsey, supra,* and *Burns v. Richardson, supra.* In both *Fortson* and *Burns,* this Court stated clearly and forcefully that the minimization or cancelling out of the voting strength of political elements of the voting population is an invidiously discriminatory and constitutionally offensive result. (See pp. 20-21 of the Jurisdictional Statement.) Those decisions leave no doubt that such discrimination provides the basis for a claim under the Fourteenth Amendment; and the judicial protection should not be different, we submit, because the discrimina-

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[7] *WMCA, Inc. v. Lomenzo,* 238 F. Supp. 916 (S.D. N.Y. 1965); *Bush v. Martin,* 251 F. Supp. 484 (S.D. Tex. 1966); *Kilgarlin v. Martin,* 252 F. Supp. 404 (S.D. Tex. 1966); and *Sims v. Baggett,* 247 F. Supp. 96 (M.D. Ala. 1965).

tory technique alleged in *Fortson* and *Burns* (a combination of single and multi-member districts) is different from that alleged in the present case (gerrymandered single member districts designed for partisan political purposes).

Appellees argue also that judicial review of gerrymandered districting is improper because of the lack of "judicially discoverable and manageable standards" and because the drawing of district boundaries is a complex process inevitably involving political consequences. This argument is untenable in light of the majority opinions in *Baker v. Carr*, 369 U.S. 186 (1962), *Reynolds v. Sims, supra, Fortson v. Dorsey, supra,* and *Burns v. Richardson, supra.* Further, the mechanics of the judicial process in dealing with the political gerrymander are no different from those in dealing with the racial gerrymander involved in *Wright v. Rockefeller,* 211 F. Supp. 460 (S.D. N.Y. 1962), affirmed 376 U.S. 52 (1964).

In short, the Constitution prohibits the use of districting lines designed to minimize or cancel out the voting strength of individual voters, whether by population disparity or on some other basis, and judicial protection against such discriminatory legislative districting may be afforded by standards shown to be fully manageable by courts.

(4) The Refusal to Hear the Offered Proof of Gerrymandering was a Denial of Due Process.

Appellees assert that appellants were not denied due process by the denial of an opportunity to present their offered proofs because the evidence was inadmissible as a matter of state law. Appellants submit that under *Honeywood v. Rockefeller*, 214 F. Supp. 897 (E.D. N.Y. 1963),[8] and *Burns v. Richardson, supra,* proofs such as were offered by appellants are relevant to a determination of the Federal questions presented.

Appellees also attack the sufficiency of appellants' Petition in the court below, and the supporting offer of proof, by reiterating the comments of Justice Souris:

> "As I view the petitioners' complaint and their 'offer of proof', they consist solely of conclusory allegations of suspicion and speculation supported only by reference to election results which, according to them, were achieved by the partisan gerrymandering by the alternate Austin-Kleiner plan. While petitioners assert they could support their claims if permitted to engage in a process of discovery, they have failed to submit an offer of proof of facts within their power to establish as distinguished from facts which they hope to discover." (377 Mich. at 446-447, 140 N.W. 2d at 455).

First, with respect to the sufficiency of the allegations of the Petition (referred to as a complaint by Justice Souris), Michigan General Court Rule 111.9(1) provides that "a pleading shall not state matters of evidence." Those allegations, set forth in part at pages 7-9 of the Jurisdictional Statement, can not be brushed aside as "conclusory."

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[8] Distinguished by appellee Hare from the present case, solely by the claim that this is a non-adversary proceeding. The present case is an original jurisdiction proceeding to review the plan, is the sole method provided to accomplish such review, and has a number of strenuously contesting parties; it is clearly an adversary proceeding.

With respect to the offer of proof, contrary to what Justice Souris and appellees claim, appellants did not condition their offer of proof upon obtaining discovery. The facts that appellants offered to prove, set forth at pages 10-13 and 27 of the Jurisdictional Statement, were part of an unconditional offer of proof. (Appellants offered to prove, in support of their Petition, additional facts not contained in the offer of proof, if allowed discovery.)

Finally, there is nothing speculative about the facts appellants offered to prove. Appellants set forth the nature and identity of witnesses who would testify that the plan was the product of successive re-drafts prepared by reference to past election results for the purpose of disadvantaging voters of one political party.

(5) The Michigan Court Made no Finding on the Facts of the Gerrymander Claim.

Appellees argue that the factual issues with respect to gerrymandering were rejected by the Michigan court's finding that the Austin-Kleiner plan, consistent with the equal population objective, forms districts as compact, contiguous and regular in shape and which follow county, city and township boundaries as nearly as practicable.[9]

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[9] This statement, contained in the June 1964 decision, was obviously not a "finding" rejecting appellants' gerrymander claims, first set forth when the present litigation was commenced some two months thereafter. This "finding," in fact, was rejected by a majority in the November 1965 opinions and by four justices, including Mr. Justice Black (377 Mich. 408, 416-48, 140 N.W. 2d 436, 441), in March 1966. (Opinion of Mr. Justice Dethmers, in which Justices Kelly and O'Hara concurred, 377 Mich. 418-427, 140 N.W. 2d 441-445).

The difficulty with the opinion of "disinterested scholar" McKay to the effect that county lines were crossed only where necessary "to avoid substantial continuing population differentials among the districts," is that he is not "disinterested" and that his conclusion, hardly a "finding," is completely lacking in factual basis.

In truth, the Michigan court allowed no evidence on, and made no findings on the factual issues of, the gerrymander claims. Rather, the court held that as a matter of federal law, a gerrymander constitutes no legal wrong.[10]

(6) Excessive Application of the Federal Population Requirement.

It is appellants' position that the Michigan Supreme Court misinterpreted the Equal Protection Clause equality of population standard under *Reynolds v. Sims,* 377 U.S. 533 (1964), improperly nullifying valid state constitutional apportionment requirements. This is not a simple assertion that the Austin-Kleiner Plan renders equality too equally, but that valid state standards have been disregarded under the guise of enforcing this Court's decisions under the Fourteenth Amendment.

This issue is not obviated, indeed it is created, by the fact that the plan approximates theoretical population equality. Nor was the issue disposed of by *Marshall v. Hare, supra,* which never held invalid the state standards requiring districts to be compact, contiguous and regular in shape, and to follow county and political subdivision boundaries.[11]

Appellees argue that the Michigan court did utilize, and made the finding that the Austin-Kleiner plan complied with, the state standards "as nearly as practicable" subject to the "controlling objective of substantially equal population." (373 Mich. 250, 254, 128 N.W. 2d 722, 723) But the

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[10] 377 Mich. at 445-446, 453, 473, 140 N.W. 2d at 454-455, 458, 468. See also 376 Mich. at 477-479, 137 N.W. 2d at 524-525.

[11] Intervenors-appellees assert that *Marshall v. Hare* "necessarily invalidated much of what appellants would enforce," but do not explain what the "much" is which *Marshall* supposedly invalidated. The claim that *Marshall* is "*res judicata* thereof" is answered *supra.*

Michigan court's determination of the surviving state standards, and of the compliance of the Austin-Kleiner plan thereto, was predicated upon its erroneous conclusion that this Court's decision in *Reynolds v. Sims, supra,*[12] required districts "containing population as equal as the 1960 Federal decennial census permits." (373 Mich. at 254, 128 N.W. 2d at 723)

CONCLUSION

This Court has not expressly dealt with the question whether single member legislative districts, deliberately gerrymandered for partisan political purposes, constitute a violation of the Fourteenth Amendment. Nor has this Court had occasion to deal with the claim that valid state legislative districting standards need not be overridden in the quest for absolute equality of population under the Fourteenth Amendment. These are substantial Federal questions that are squarely presented by this case, and are, we submit, deserving of plenary consideration by this Court.

Respectfully submitted,

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Dated: October 17, 1966.

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[12] This Court held that the Equal Protection Clause requires districts "as nearly of equal population as is practicable." (377 U.S. 533, 577)

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 505

IN THE MATTER OF APPORTIONMENT OF THE MICHIGAN LEGISLATURE

MAXWELL F. BADGLEY, et al.,
Appellants,
v.
SECRETARY OF STATE JAMES M. HARE, and AUGUST SCHOLLE, et al.,
Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

PETITION FOR REHEARING

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Appellees.

ON APPEAL FROM THE SUPREME COURT OF MICHIGAN

PETITION FOR REHEARING

By the *per curiam* decision of the Court of November 21, 1966, appellees' Motions to Dismiss the above entitled appeal were granted without opinion, the appeal having been dismissed "for want of a substantial federal question." Appellants respectfully request the Court to rehear appellees' Motions to Dismiss or Affirm, and to reconsider its decision granting the Motions.

Basis of This Application

Appellants seek a rehearing only with respect to the Court's determination that a substantial federal question was not presented by the arbitrary action of the Michigan Supreme Court in denying to appellants an opportunity to present evidence.

In the Jurisdictional Statement (pp. 34-5), appellants relied upon *Burns v. Richardson*, 384 U.S. 73 (1966) and *Fortson v. Dorsey*, 379 U.S. 433 (1965), in support of their position that gerrymandering constituted a justiciable *federal* cause of action under the Equal Protection Clause. Appellants argued that the refusal to allow the presentation of any evidence material to this claim denied to appellants a constitutionally fair hearing.

Appellants did not raise, however, the separate and distinct ground that this same refusal to hear evidence denied appellants the constitutional right to prove their justiciable *state law* claim that the Michigan apportionment plan was deliberately gerrymandered for partisan political purposes in violation of Article 4 of the Michigan Constitution of 1963.

I.

It is, of course, well settled law that the refusal of a state court to receive or consider competent proof material to an issue in the litigation, whether involving state or federal law, amounts to a denial of a hearing on that issue, in contravention of the due process clause of the Constitution of the United States. *Georgia R. & Electric Co. v. Decatur*, 295 U.S. 165, 171 (1935); *Londoner v. Denver*, 210 U.S. 373, 385-6 (1908). See also *Interstate Commerce Commission v. Louisville & Nashville R. Co.*, 227 U.S. 88,

91 (1913). The right to be heard on lawful claims, including the introduction of evidence in support of such claims, is a constitutional right and the denial of that right is a denial of due process. *Republic National Bank of Dallas v. Crippen,* 224 F. 2d 565, 566 (5th Cir. 1955). These cases clearly support appellants' constitutional right to a full hearing, including the introduction of evidence, in enforcing a fundamental state right—the right to a vote unimpaired by gerrymandered legislative districting.[1] See also, *Baltimore & Ohio R. Co. v. U.S.,* 298 U.S. 349, 369 (1936).

II.

In *Burns v. Richardson, supra,* Mr. Justice Brennan, for the Court, had much to say about the implications of *proof* in support of a claim of "invidious discrimination" that would operate to "minimize or cancel out the voting strength of racial or political elements of the voting population." (384 U.S. at 88, 89.)

In concluding that the interim legislative apportionment plan had not been shown to "fall short of constitutional standards," the Court expressly reserved the right of "constitutional challenge" by plaintiffs in that case, based upon a showing of invidious discrimination. (*Id.* at 89, 97.) Said Mr. Justice Brennan, "There may, for example, be merit in the argument that by encouraging block voting multi-member districts diminish the opportunity of a minority party to win seats. But such effects must be demonstrated by evidence." (*Id.* at 88, footnote 14.) The Court, in granting interim approval of the apportionment plan there involved, expressly reserved for future consideration, based upon evidence, "infirmities, temporary

[1] Appellants' standing, under Section 6 of Article 4 of the Michigan Constitution of 1963, to enforce their rights on the state-based cause of action in an adjudicative proceeding in the Michigan Supreme Court, is undisputed.

or permanent, not established by the present record." (*Id.* at 97.)[2]

If in *Burns* the interests of justice required that plaintiffs there be accorded the right at a later date to introduce proof of discrimination not previously offered in the district court, then *a fortiori*, serious consideration should be given, we respectfully submit, to the elaborate offer of proof that was properly and timely made in the case at bar.

III.

Testimony of witnesses and documentary evidence were offered to establish that past election results had been used to draw legislative districts deliberately gerrymandered for partisan political purposes, and that the district boundary lines operated to minimize and cancel out the voting strength of political elements of the voting population.

The offer of proof was clear, precise and specific: It involved proof by "testimony of witnesses, including the members of the Commission on Legislative Apportionment, certain individuals who assisted Democratic commissioners Austin and Kleiner in drawing the Plan, historians, political scientists, mathematicians, representatives of the major political parties in Michigan, incumbents in the state legislature in 1963-1964, and county, township, and city government officials, as well as documentary evidence consisting of memoranda, charts, statistical exhibits and maps, to prove the following facts." The facts are then set forth on pages 10-13 of appellants' Jurisdictional Statement; copies of the relevant portions are attached hereto as an exhibit.

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[2] See also, *Fortson v. Dorsey*, 379 U.S. 433, 439 (1965).

Manifestly, the testimony and documentary evidence offered was competent, and clearly it was material to the issue of whether the apportionment law was gerrymandered in violation of the Michigan Constitution. Only after the evidence had been presented could a court properly decide whether appellants have met the requisite burden of proof.[3]

IV.

This Court's decision not to entertain appellants' Fourteenth Amendment attack on political gerrymandering, should not be dispositive of the present petition. The due process right to a hearing is grounded upon both the federal and state causes of action. Whatever inhibitions be thought to impede the appeal on the federal cause of action, there should be no obstacle to proceeding to a hearing on the state cause of action, because the state constitution itself articulates precise standards and contemplates their enforcement by judicial action. It is clear that an apportionment plan that contains legislative districting deliberately gerrymandered for partisan political purposes, creates a justiciable Michigan claim because it violates Article 4 of the Michigan Constitution of 1963. This is the view of a majority of the justices of the Michigan Supreme Court.[4]

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[3] The Michigan Supreme Court need not have actually taken the evidence; under Michigan procedure, it could have been heard by a circuit court judge or by a master appointed for that purpose by the Michigan Supreme Court.

[4] Only three of the eight justices (Kavanagh, Smith and Souris) held that the various anti-gerrymandering standards of Article 4, not being severable from other invalid provisions, do not support a claim of gerrymandering as a matter of state law. In contrast, in an opinion in which Justice Black concurred, Justice Adams stated that the Article 4 provisions of the Michigan Constitution were adopted to forbid political

(Continued on next page)

Nevertheless, throughout the proceedings the Michigan court adamantly refused to allow appellants to introduce evidence in support of that state cause of action. In its January 14, 1965 and February 5, 1965 orders, both unreported, that court denied discovery and directed the presentation of oral argument without allowing the presentation of evidence. Subsequent to oral argument, the court remanded the Austin-Kleiner plan to the apportionment commission in November 1965. (376 Mich. 410, 481-3, 137 N.W. 2d 495, 526.) By order dated January 12, 1966, the Court ordered the delivery to the Supreme Court Clerk's office, for filing, all of the official proceedings and records of the apportionment commission. Obviously, these records contained little, if any, of the evidence that appellants sought to present. Finally, in April 1966, and again without allowing the presentation of evidence by appellants, the court upheld the validity of the Austin-Kleiner plan as a matter of state and federal law. (377 Mich. 396, 140 N.W. 2d 436.)[5]

Conclusion

Even if appellants' claim of political gerrymandering is determined not to be a substantial federal question—in spite of the almost invitatory language of this Court's

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(Continued from preceding page)

gerrymandering. (See 376 Mich. 410, 457 and 483-4, 137 N.W. 2d 495, 514, and 138 N.W. 2d 16.) Similarly, Justice Kelly, in his November 1965 opinion, in which Justice Dethmers concurred, held that the formation of legislative districts by the use of previous election results, giving one political party advantage over the other, violated the Michigan Constitution. (See 376 Mich. 410, 426-8, 436-8, and 440, 137 N.W. 2d 495, 498-9, 505; see also 377 Mich. 396, 431-2 and 424-5, 140 N.W. 2d 436, 448, and 444-5.) And Justice O'Hara expressly concurred with Justice Dethmers' March 1966 opinion condemning the gerrymandering in the Austin-Kleiner plan. (377 Mich. 396, 433, 140 N.W. 2d 436, 448-9.)

[5] Justices Dethmers and Kelly commented upon this obdurate denial of the appellants' request to present proof of gerrymandering. (See 377 Mich. 396, 424-5, 427, 429 and 431, 140 N.W. 2d 436, 444-7.)

opinion in *Burns*—it does constitute a justiciable cause of action under the clear standards of the Michigan Constitution. And the persistent refusal by the Michigan Court to take, or direct the taking, of the evidence offered by appellants to support the claim was a denial of due process under the Fourteenth Amendment.

The reluctance of this Court to go behind the decision of a state court of last resort is quite understandable if the parties have had an opportunity to present the kind of evidence referred to by Mr. Justice Brennan in *Burns*. But if that opportunity has not been offered and if the Court is to turn its back upon such a flagrant denial of due process as is involved here in the refusal of the Michigan Court to hear any proof at all, then the "one-man, one-vote" principle could become an instrument of political oppression, rather than a Magna Charta of fair and equal representation in the voting booths of the nation, as the Court intended it to be.

Wherefore, appellants pray that the Court grant a rehearing on appellees' Motions to Dismiss or Affirm in the above cause.

Respectfully submitted,

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Dated: December 15, 1966.

I hereby certify that the foregoing petition is presented in good faith and not for delay, and that such is restricted to the ground set forth above, which was available to appellants but not previously presented.

.....

William T. Gossett

Exhibit 1

"Austin-and Kleiner and others who actually participated in the drawing of the Austin-Kleiner Alternate Plan obtained and utilized extensive data and records of past voting results in each precinct, city, township and county, specifically including the results of the 1962 State Treasurer election, which data and records were compiled and tabulated by and with the support of the Democratic Party and the International Union, UAW. The purpose of utilizing such data and records by Austin, Kleiner and their aides, was the creation of an apportionment plan most favorable to the Democratic Party and its candidates.

Different variations of a plan with districts of equal population were drawn from time to time in the course of preparing the Austin-Kleiner Alternate Plan, each of which was tested by application of such data and past voting records, and such plan was successively revised and redrawn in attempts to maximize Democratic Party voting strength or to minimize Republican Party voting strength.

The draftsmen of the plan, after its adoption, openly boasted of their success in achieving their objectives and also stated openly that they intended the plan as "a negotiating document" and had not expected to be able to get it adopted in its original form.

The plan accomplishes such gerrymandering by apportioning the districts without any regard for political subdivision or natural or historical boundary lines, and by constructing unnaturally shaped districts in order to join geographically separated concentrations of voters of one or the other party or to split up certain of such concentrations.

The intentional acts of malapportionment and gerrymandering for political advantage incorporated by the draftsmen of the plan include the following:

(a) By deliberately joining areas which the 1962 election results showed to have voted for a particular party's candidates, the draftsmen drew five House

districts in Genesee County which cancelled out Republican voting strength there altogether. Based on the 1962 results, all five districts would have gone to Democratic Party candidates although Republicans polled approximately 45% of the overall vote. The actual results of the 1964 contests in these districts were that all five seats went to Democrats, although Republicans polled 39% of the vote.

(b) By contrast, the same technique of joining areas of known voting behavior was employed to maximize Democratic Party voting strength in the five House districts in Kent County. There, the 1962 election results showed that two of the five seats would have gone to Democratic candidates while the Democratic Party polled approximately 40% of the overall vote. In 1964 the Democrats won their two seats handily.

(c) Similarly, the ten House districts encompassing Oakland County (plus three townships of Genesee County) were drawn in such a way that the Republicans could count on five "safe" seats while polling, according to the 1962 election results, 60% of the vote. (The actual results of the 1964 contests in these districts were that the Republican candidates took four seats while polling 50% of the vote.) This was accomplished by dividing up cities so that areas of high Republican voting strength were impacted and extra Democratic pluralities could be added to areas of marginal Republican voting strength.

(d) By crossing county lines to join together physically-separated cities which the 1962 election results showed to demonstrate Democratic Party voting patterns, "safe" Democratic seats were created in the Senate districts 33 and 34. District 33 was formed by separating the City of Manistee, the county seat of Manistee County, from the rest of its county and joining it with a group of counties extending south to include the City of Muskegon, 75 miles away. Similarly, the cities of Saginaw and Bay City, respectively the

county seats for their counties, were joined together into District 34, with a few intervening townships from both counties, while the rest of the surrounding townships from both counties were formed into a horseshoe-shaped District 35. Based upon 1962 election results, Districts 33 and 34 would be Democratic seats, while the adjoining Districts 35 and 36 would be Republican districts, although any other configuration which did not involve the joining of the cities would not have resulted in a Democratic district in either area. These four seats came out exactly as predicted in 1964, two Republican and two Democratic.

(e) In the case of Senate District 17, the City of Pontiac, the county seat for Oakland County, together with seven townships in the northwestern part of the county, was joined with all of Lapeer County in order to cancel out Republican voting strength in Lapeer County.

(f) Other House districts were drawn in such a way as to split up parts of cities which were disclosed by the 1962 election results to be strong areas of Republican party voting, by dividing them into separate pieces and combining them with other cities for the purpose of diffusing and ultimately destroying the voting power of those concentrations, as in the case of House Districts 31, 32 and 33, which cut into three parts the northwest quarter of the City of Dearborn, an area shown by the 1962 election results to have returned a high Republican vote.

(g) In certain districts, such as House Districts 43 and 51, townships where incumbent Republican legislators resided were unnaturally and unnecessarily detached from the rest of their counties and combined with territory containing another Republican incumbent in order thus to defeat one of them or force him to move away from his constituency."